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S. Hrg. 104–392

S. 1—UNFUNDED MANDATES

JOINT HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

AND THE

COMMITTEE ON THE BUDGET UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

S. 1

TO CURB THE PRACTICE OF IMPOSING UNFUNDED FEDERAL MANDATES ON STATES AND LOCAL GOVERNMENTS; TO STRENGTHEN THE PARTNERSHIP BETWEEN THE FEDERAL GOVERNMENT AND STATE, LOCAL AND TRIBAL GOVERNMENTS; TO END THE IMPOSITION, IN THE ABSENCE OF FULL CONSIDERATION BY CONGRESS, OF FEDERAL MANDATES ON STATE, LOCAL, AND TRIBAL GOVERNMENTS WITHOUT ADEQUATE FUNDING, IN A MANNER THAT MAY DISPLACE OTHER ESSENTIAL GOVERNMENTAL PRIORITIES; AND TO ENSURE THAT THE FEDERAL GOVERNMENT PAYS THE COSTS INCURRED BY THOSE GOVERNMENTS IN COMPLYING WITH CERTAIN REQUIREMENTS UNDER FEDERAL STATUTES AND REGULATIONS, AND FOR OTHER PURPOSES.

JANUARY 5, 1995

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S. 1—UNFUNDED MANDATES

THURSDAY, JANUARY 5, 1995

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
AND THE COMMITTEE ON THE BUDGET,
Washington, DC.

The Committees met, pursuant to notice, at 9:35 a.m., in room 216, Hart Senate Office Building, Hon. William V. Roth, Jr., Chairman of the Committee on Governmental Affairs, and Hon. Pete V. Domenici, Chairman of the Committee on the Budget, presiding.

Present: Senators Roth, Domenici, Stevens, Cohen, Thompson, Cochran, Grassley, McCain, Smith, Glenn, Levin, Dorgan, Gramm, Bond, Brown, Gorton, Gregg, Exon, Lautenberg, Dodd, and Murray.

OPENING STATEMENT OF CHAIRMAN ROTH

Chairman ROTH. The hearing will come to order. I welcome everyone here this morning and want to take just a few minutes to lay out the procedures we will follow for this special joint hearing of the Governmental Affairs and Budget Committees.

For those of you that are not aware, Governmental Affairs and Budget share a unique relationship of joint referral on issues amending the Budget Act. I am particularly pleased that we have come together for this hearing and I look forward to a cooperative working relationship with my good friend from New Mexico, the Chairman of the Budget Committee, on a variety of issues we will be considering in this Congress.

We will proceed with opening statements in the following order. First, the two Chairs, myself and Senator Domenici, followed by the Ranking Members, Senators Glenn and Exon. We will then recognize Members following the "early bird" rule, rotating between Committees, and continuing this process during questioning.

I understand that Members of the Budget Committee have voluntarily agreed to limit their statements to save time, and I compliment them on that. And to all Members on my side, of Governmental Affairs, I encourage brevity so that we can begin hearing from our witnesses.

Testimony will be taken in the order that appears on the witness list. We have allotted 10 minutes to Senator Kempthorne as a primary sponsor of this legislation so that he may set the stage for the comments to follow. All others are asked to limit their oral statements to 5 minutes. The clock will be operating, and you should take notice of the 1-minute yellow light to start wrapping up your remarks. Of course, written testimony will be included in its entirety in the record.

A vote is scheduled to occur at 11:30 a.m., so we may have to recess for a period at that time. However, we will try to limit any unnecessary delays. We will appreciate everybody's cooperation, and with that, let me proceed.

Two months ago, there was a national election, the results of which have been profoundly felt in this institution. Now different people may have varying interpretations of exactly what the message was from that day in early November. However, I think we might all agree that the voters registered a strong dissatisfaction with the way their Federal Government operates. It is probably fair to say that the public sees the government in Washington as being remote, unresponsive, and out of touch with their concerns.

Perhaps nothing epitomizes the justification for this concern more than the government's propensity to impose costly mandates on other levels of government. Through such actions, the Federal Government is, in effect, saying to the citizens back home in our cities, counties, and States, it doesn't matter what priorities you establish for your local tax dollars. We here in Washington have better ideas for how that money should be spent and our priorities come first, regardless of your need to fund schools, public safety, economic development, and similar matters.

This attitude is really one of arrogance as much as of remoteness and insensitivity. Both it and the types of legislative and regulatory actions it leads to have grown steadily in recent years. There should be little wonder that it contributed to the voter backlash we witnessed recently.

Fortunately, this area seems to be one area where Members of both parties in Congress began to sense something was amiss and corrective action needed, even before last November, and this is partially evidenced by the number of bills to address the problems that were introduced in the last Congress.

But the strongest evidence of Congressional concern was the broad support last year for Senator Kempthorne's bill on this subject. The bipartisan nature of this concern can be seen not only in the list of cosponsors but also in the serious effort made by Senator Glenn as the then-Chairman of the Governmental Affairs Committee to develop an effective bill and move it through the Senate. I was very pleased to work closely with both of my colleagues in this effort. The fact that we were not able to enact a bill in the end was regrettable.

Since then, a great deal of extra effort has gone into refashioning the legislation. It has been strengthened to protect State and local taxpayers and has been expanded to include some private sector regulatory reform.

This expansion gives me some concern. The Committee on Governmental Affairs has broad jurisdiction over regulatory reform and the Committee will initiate a series of hearings on the many facets of regulatory reform on February 8. My concern with the new regulatory reform of S. 1 is not what it says but what it may invite in the ways of perfecting amendments. This bill can be derailed in two ways, by being weakened and by being excessively strengthened.

Since the election, Senators Kempthorne, Glenn, Domenici, Exon, and I have worked to strengthen this legislation without going

overboard. Senator Kempthorne's efforts, in particular, have not only been tireless, they have reflected very sound judgment in seeking the best possible balance.

I believe we now have a better bill.[1] I look forward to the hearing today and the markup tomorrow.

Chairman ROTH. Senator Domenici.

OPENING STATEMENT OF CHAIRMAN DOMENICI

Chairman DOMENICI. I thank you very much, Mr. Chairman.

I first note the presence of the new Ranking Member of the Budget Committee, Senator Exon. Might I right at the offset, Senator, congratulate you on your new position and indicate to you that we look forward to working with the minority not only on this bill but as we work our way through the budget process and the various responsibilities that we have. Welcome to the ranking position and I hope we will be working together.

Let me make it clear that Congress does not know the cost nor pay for mandates that it imposes on State and local governments and the private sector. That is the issue. We don't know the cost and we don't pay for it. Mayors, governors, county commissioners, and business leaders, Democrats, Republicans, liberals, and conservatives say that unfunded mandates are unfair and cry out for reform. That is why we are here.

Mr. Chairman, I want to say to you that if you mark this bill up tomorrow, we will be fully constituted and we will mark it up and report it out on Monday, so hopefully by Tuesday, it will have completed its Committee requirements and then it will be in the hands of the Senate and our Republican leader.

The bill that we are discussing today is the No. 1 priority for our majority leader, as you have indicated, Senator Roth. I was with him in Williamsburg last November, shortly after the election, when he announced to the Republican Governors that S. 1 would be the bill to change the way the Federal Government has dealt with shifting responsibilities and without resources to the States and it would be our No. 1 priority.

I would like to make it clear that this is not a procedural bill. It is the start of a fundamental redefinition of the federalism system, or some might say, a return to the Founding Fathers' principle of federalism. As such, while the bill makes changes to the Budget Act and therefore requires the Budget Committee's participation, the jurisdictional issue is a minor issue relative to the broader issue of how we will define the role and the function of the Federal Government in the 21st Century, and this will be the lead-off salvo by the Congress of the United States, and hopefully the President, in an effort to redefine that relationship.

Before I conclude, let me publicly congratulate Senator Kempthorne for his persistence, hard work, and leadership on this issue. Sometimes, fellow Senators, we name laws around here and we use the names of Senators who have been their prime advocates. Remember Gramm-Rudman-Hollings. Viewing the extraordinary work that he has put into this legislation, maybe we should call this the

[1] The text of S. 1 appears in the Appendix on page 109.

"Dirk Kempthorne Bill." I certainly intend to do that wherever I can.

I have committed to the majority leader that this bill will be ready for his consideration by Tuesday. I am sure our Ranking Member will concur today that we will have that meeting on Monday and proceed with markup.

Thank you very much, and thanks to all the Members.

Chairman ROTH. Thank you, Mr. Chairman. Senator Glenn.

OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Thank you, Mr. Chairman.

I wanted to welcome our witnesses to today's hearing. I have a longer written statement and I would ask unanimous consent that it be included in the record. I will make shorter remarks here.

I think it is worth stepping back just a moment to look at the evolution of Federal, State, and local relationships over the last decade-and-a-half so we can put this debate into some historical context.

The seeds from which sprang the mandate reform movement can be traced back to events and policies that have transpired in the inter-governmental relationship over the last 10 to 15 years. During that time period, Federal aid to State and local governments was severely cut or even eliminated in a number of key domestic program areas, while at the same time, enactment and subsequent implementation of various Federal statutes passed on new costs to State and local governments.

Let me quote just a few facts and figures highlighted in the Committee report on last year's Federal mandate reform bill: "According to CBO, 89 bills were reported out of Congressional Committees between 1983 and 1988 that had an annual estimated cost to State and local governments in excess of $200 million each. A total of 382 bills were reported out that had some new costs to State and local governments." So obviously, not all these bills became law, but CBO's figures do give pause for reflection.

Senator Domenici says we don't even know what the costs are, but one thing we do know, they are big. They are very, very large costs.

EPA estimates that the cost of environmental mandates to State and local governments will rise from $22 billion in 1987 to $37 billion by the year 2000. The Vice President's National Performance Review puts this figure at $44 billion by the year 2000, after allowing adjustment for inflation. According to the Federal Funds Information Service, Federal discretionary aid to State and local governments fell 28 percent in real terms during the decade of the 1980's.

In 1986, the general revenue sharing program was terminated, a program that provided approximately $4.5 billion a year in flexible funds to State and local governments and a program that had provided $83 billion in funding since its inception in 1972.

So whether these figures are accurate or not, we do know one thing. The impact is huge. In simple terms, State and local governments have ended up receiving less of the Federal carrot and more of the Federal stick.

We almost passed S. 993 last year. It was the predecessor to S. 1 this year. We had it ready to be scheduled for the floor in the

summer. There were lots of delay on the floor, as we are all aware of, last year, and then we wound up having to give priority to appropriations and authorization bills during the fall. Senator Mitchell finally said if we could get a unanimous consent agreement, then we should pass S. 993 through. We had it cleared on both sides of the aisle after some objections, but got it cleared with the exception of one Senator that would not give unanimous consent, which I resented but that is the way it went.

So we were not able to pass S. 993 last year, but we made some improvements in it over the break and hopefully we are going to get S. 1 passed this year, very, very soon.

This is legislation I have been honored to help develop in a bipartisan fashion with Senators Kempthorne, Domenici, Exon, Roth, and others, and I think this legislation will set new standards for fiscal understanding and discipline for Congress to meet when it considers future legislation that may impose Federal mandates on State and local governments.

I won't go into all the details of what the bill provides. I am sure that will be discussed by our witnesses this morning.

Let me give particular credit to Senator Kempthorne, who has stuck with this effort. He has been a pit bull. He has traveled all over the country to meet with the different State and local government groups. He has stuck with it and deserves a lot of credit. It has been an honor to work with him on putting this whole legislative effort together. Thank you, Mr. Chairman.

[The prepared statement of Senator Glenn follows:]

PREPARED STATEMENT OF SENATOR GLENN

Mr. Chairman. I strongly support S. 1—the Kempthorne-Glenn Bill on Federal mandate reform and relief. This is legislation that had strong bi-partisan and Administration support last year, in fact we had 67 cosponsors, and my hope is that we will be able to pass the bill quickly through the Committee, the House and Senate in this Congress. But before I go into a description of the bill, I'd like to provide some background to the whole unfunded Federal mandates debate.

On October 27, 1993, State and local elected officials from all over the Nation came to Washington and declared that day—"National Unfunded Mandates Day." These officials conveyed a powerful message to Congress and the Clinton Administration on the need for Federal mandate reform and relief. They raised four major objections to unfunded Federal mandates.

First, unfunded Federal mandate's impose unreasonable fiscal burdens on their budgets;

Second, they limit State and local government flexibility to address more pressing local problems like crime and education;

Third, Federal mandates too often come in a "one-size-fits-all" box that stifles the development of more innovative local efforts—efforts that ultimately may be more effective in solving the problem the Federal mandate is meant to address; and,

Fourth, they allow Congress to get credit for passing some worthy mandate or program, while leaving State and local governments with the difficult tasks of cutting services or raising taxes in order to pay for it.

In our two hearings, we heard testimony from elected State and local, officials from both parties, representing all sizes of government. It was clear from the testimony that unfunded mandates hit small counties and townships as hard as they do big cities and larger States.

I think it's worth stepping back and taking a look at the evolution of the Federal-State-local relationship over the last decade and a half, so we can put this debate into some historical context. I believe the seeds from which sprang the mandate reform movement can be traced back to the so-called policy of "New Federalism," a policy which resulted in a gradual but steady shift in governing responsibilities from the Federal Government to State and local governments over the last 10 to 15 years.

During that time period, Federal aid to State and local governments was severely cut, or even eliminated, in a number of key domestic program areas. At the same time, enactment and subsequent implemention of various Federal statutes passed on new costs to State and local governments. In simple terms, State and local governments ended up receiving less of the Federal carrot and more of the Federal stick.

A. The Cost of Federal Mandates

Let's examine the cost issue first. While there has been substantial debate on the actual costs of Federal mandates, suffice it to say that almost all participants in the debate agree that there isn't complete data on the aggregate costs of Federal mandates to State and local governments. In fact, one of the major objectives of S. 993 last year, and of S. 1 this year is to develop better information and data on the cost of mandates. Likewise, there is even less information available on estimates of what potential benefits might be derived from select Federal mandates—a point made by representatives from the disability, environmental, and labor communities in the Committee's second hearing. Nonetheless, there have been efforts made in the past to measure the cost impacts of Federal mandates on State and local governments. And those efforts do show that costs appear to be rising. Since 1981, the Congressional Budget Office (CBO) has been preparing cost estimates on major legislation reported by Committee with an expected annual cost to State and local governments in excess of $200 million. According to CBO, 89 bills with an estimated annual cost in excess of $200 million each were reported out of committee between 1983 and 1988. I would point out one major caveat with CBO's analysis—it does not indicate whether these bills funded the costs or not, nor how many of the bills were eventually enacted. Still, even with a rough calculation, committees reported out bills with an average estimated new cost of at least, $17.8 billion per year to State and local governments. In total, 382 bills were reported from committees over the 6 year period with some new costs to State and local governments. So if anything, the $17.8 billion figure is a conservative estimate for reported bills.

Federal environmental mandates head the list of areas that State and local officials claim to be the most burdensome. A closer look at two of the studies done on the cost to State and local governments of the compliance with environmental statutes does indicate that these costs appear to be rising. A 1990 EPA study, *Environmental Investments: The Cost of a Clean Environment,* estimates that total annual costs of environmental mandates (from all levels of government) to State and local governments will rise from $22.2 billion in 1987 to $37.1 billion by the year 2000—an increase in real terms of 67 percent. EPA estimates that the cost of environmental mandates to State governments will rise from $3 billion in 1987 to $4.5 billion by 2000—a 48 percent increase. Over the same timeframe, the annual costs of environmental mandates to local governments is estimated to increase from $19.2 billion to $32.6 billion—a 70 percent gain. According to the Vice President's National Performance Review, the total annual cost of environmental mandates to State and local governments, when adjusted for inflation, will reach close to $44 billion by the end of this century.

The City of Columbus in my home State of Ohio also noted a trend in rising costs for city compliance with Federal environmental mandates. In its study, the city concluded that its cost of compliance for environmental statutes would rise from $62.1 million in 1991 to $107.4 million in 1995 (in 1991 constant dollars), a 73 percent increase. The City estimates that its share of the total city budget going to pay for these mandates will increase from 10.6 percent to 18.3 percent over that timeframe.

In addition to environmental requirements, State and local officials, in our Committee hearings cited other Federal requirements as burdensome and costly. They highlighted compliance with the Americans with Disabilities Act and the Motor Voter Registration Act; complying with the administrative requirements that go with implementing many Federal programs; and, meeting Federal criminal justice and educational program requirements. Now I would note that while each of these individual programs or requirements clearly carry with them costs to State and local governments, costs which we have too often ignored in the past, I believe that on a case-by-case basis each of these mandates has substantial benefits to our society and our Nation as a whole, otherwise I along with many of my colleagues in the Senate wouldn't have voted to enact them. State and local officials readily concede that individual mandates on a case-by-case basis may indeed be worthy. However, when you look at all mandates spanning across the entire gamut of Federal laws and regulation, you begin to understand that it is the aggregate impact of all Federal mandates that has spurred the calls for mandate reform and relief. The Advisory Commission on Intergovernmental Relations testified in our April hearing that the number of major Federal statutes with explicit mandates on State and local gov-

ernments went from zero during the period of 1941 to 1964, to 9 during the rest of the 1960's, to 25 in the 70's, and 27 in the 80's.

However, to truly reach a better understanding of the Federal mandates debate, we must also look at the Federal funding picture vis-a-vis State and local governments.

B. Federal Aid to State and local governments

The record shows that Federal discretionary aid to State and local governments to both implement Federal policies and directives as well as comply with them saw a sharp drop in the 1980's.

An examination of Census Bureau data on sources of State and local government revenue shows a decreasing Federal role in the funding of State and local governments. In 1979, the Federal Government's contribution to State and local government revenues reached 18.6 percent. By 1989, the Federal contribution of the State and local revenue pie had steadily shrunk to 13.2 percent before edging up to 14.3 percent in 1991—the latest year that data is available.

What contributed to the declining trend in the Federal financing of State and local governments? A closer look at patterns in Federal discretionary aid programs to State and local governments during the 1980's provides the answer. According to the Federal Funds Information Service, between 1981 and 1990 Federal discretionary program funding to State and local governments rose slightly from $47.5 billion to $51.6 billion. However, this figure when adjusted for inflation tells a much different story; Federal aid dropped 28 percent in real terms over the decade.

A number of vital Federal aid programs to State and local governments experienced sharp cuts and, in some cases, outright elimination during the decade. In 1986, the Administration and Congress agreed to terminate the general revenue sharing program—a program that provided approximately $4.5 billion annually to local governments and allowed them broad discretion on how to spend the funds. Since its inception in 1972, general revenue sharing had provided approximately $83 billion to State and local governments. Unfortunately, the Reagan Administration succeeded in terminating the program and the Congress followed its lead. There were other important Federal-State-local programs that were substantially cut back between 1981 and 1990. They include: Economic Development Assistance, Community Development Block Grants, Mass Transit, Refugee Assistance, and Low-Income Home Energy Assistance.

Luckily, under both the Bush and Clinton Administration, we've managed to restore some needed funding to many of these programs. Still, in real dollars, funds for discretionary aid programs to State and local governments remain 18 percent below their 1981 levels.

The Committee's Legislative Efforts

In the last Congress, eight bills were referred to the Governmental Affairs Committee that touched on at least some aspect of the unfunded Federal mandates problem. After two hearings, we marked up a compromise bill that borrowed the best of the various provisions and requirements from the different bills. We worked closely in a deliberative, bi-partisan fashion with the de-facto leader on this issue, Senator Kempthorne, along with other Members and with the Administration. The Kempthorne-Glenn Compromise had the endorsement and strong support of the 7 groups representing State and local governments: the National Governors Association; the National Conference of State Legislators; the Council on State Governments; the National League of Cities; the U.S. Conference of Mayors; the National Association of Counties; and the International City Management Association. It had the backing of the Clinton Administration and was endorsed by the editorial boards of the New York Times, Cleveland Plain Dealer, and other newspapers across the country, both large and small. The bill we have before us today as S. 1 largely embodies what we had last year in S. 993.

Let me explain what the Kempthorne-Glenn Bill does:

It requires the Congressional Budget Office to conduct State, local and tribal cost estimates on legislation that imposes new Federal mandates in excess of a total aggregate at all levels of $50 million annually onto the budgets of State, local, and tribal governments. The current law requires these estimates at a $200 million threshold. I believe that that high a figure allows a lot of Federal mandates to slip through without being scored. $200 million spread across equally among all States may not be much, but if it falls particularly hard on any one region—which does happen with legislation around here—it is substantial. Let me make clear, however, that what CBO will score here are new Federal mandates, not what State, local, and tribal governments are spending to comply with existing mandates, nor what they are spending to comply with their own laws and mandates.

Second, and I think most importantly, is that the bill holds Congress accountable for imposing additional unfunded Federal mandates. We do this by requiring a majority point of order vote on any legislation that imposes new unfunded Federal mandates in excess of $50 million annual cost to State, local or tribal governments.

To avoid the point of order, the sponsor of the bill would have to authorize funding to cover the cost to State and local governments of the Federal mandate, or otherwise find ways to pay for the mandate. This could come from the expansion of an existing grant or subsidized loan program, or the creation of a new one, or perhaps the raising of new revenues or user fees.

S. 1 also includes provisions for the analysis of legislation that imposes mandates on the private sector. CBO would have to complete a private sector cost estimate on bills reported by committee with a $200 million or more annual cost threshold.

We do exempt certain Federal laws from this bill. Civil rights and Constitutional rights are excluded. National security, emergency and ratification of international treaties are also exempt.

I want to also point out that the bill does not prohibit Congress from passing unfunded Federal mandates. There may be times when it is appropriate to ask State and local governments to pick up the tab for Federal mandates. But let that debate take place on the Senate floor and let there be a vote on the specific mandate in the legislation.

The Kempthorne-Glenn Compromise also addresses regulatory mandates. We all know how the Federal bureaucracy can impose burdensome and inflexible regulations on State and local governments as well as on others who end up trapped in the bureaucracy's regulatory net. In the Committee's November hearing, we heard testimony from Susan Ritter, County Auditor for Renville County, North Dakota. Ms. Ritter noted that the town of Sherwood, in her State, with a population of 286, will have to spend $2,000—one half of its annual budget—on testing its water supply in order to comply with EPA regulations. Clearly, there is no way that the town is going to be able to meet this requirement.

So, consistent the President's Executive Orders, we have required that Federal agencies conduct cost-benefit analyses on major regulations that impact State, local and tribal governments. Further, agencies must develop a timely and effective means of allowing State and local input into the regulatory process. Given that State and local governments are responsible for implementing many of our Federal laws, it is not only fair that they be considered partners in the Federal regulators process, but it is also good public policy as well. Such a process must also be consistent with the Administrative Procedure Act to ensure an open and fair process. The bill also requires Federal agencies to make a special effort in performing outreach to the smallest governments. Then maybe we'll be able to minimize the occurrence of situations like the one that took place in the town of Sherwood.

Finally, we've asked the Advisory Commission on Intergovernmental Relations to work with CBO to develop a better cost estimating process and to monitor implementation of the legislation.

Closing Remarks

In closing, I'd like to put this issue into some larger perspective. As we all know, the Federal, State, and local relationship is complicated. It is a blurry line between where one level of government's responsibility ends and another's begins. All three levels of government need to work together in a constructive fashion to provide the best possible delivery of services to the American people in the most cost-effective fashion. After all, as Federal, State, and local officials, we all serve the same constituents. Further, we serve the American people at a time when their confidence in all three levels of government is probably at an all-time low. There are numerous explanations for this lack of confidence in government and I won't go into them here. Vice President Gore's National Performance Review attributes "an increasingly hidebound and paralyzed intergovernmental process" as at least part of the reason for why many Americans feel that government is wasteful, inefficient, and ineffective. We need to restore balance to the intergovernmental partnership as well as strengthen it so that government at all levels can operate in a more cost-effective manner.

Both the Administration and a number of my colleagues have made proposals to shift a number of Federal programs and responsibilities to State and local governments. Clearly, as this mandates debate has shown us, we ought to at least experiment to see if State and local governments can carry out some of these programs in a more effective fashion than we have been doing at a Federal level. I know from my years as Chairman of the Governmental Affairs Committee that Americans do want more efficient and less costly government and maybe one way to accomplish that objective is to grant more flexibility to State and local governments and let

them run some of these programs. However, I think we should proceed with some degree of caution. Growing up in the Depression, I learned that State and local governments don't have the wherewithal and resources to meet all human needs. That's why President Roosevelt came through with the New Deal. So there has been and will continue to be, the need for a Federal presence in many domestic policy areas. But that shouldn't preclude us from maybe loosening the reigns on State and local governments some, or even dropping them entirely. But we should be careful, and look at it on a case-by-case basis..

I believe that the Kempthorne-Glenn Bill would help to restore that partnership and bring needed perspective to future Federal decisionmaking. I am glad that it has been designated S. 1, the first bill introduced in the Senate and look forward to working towards its very early passage.

I want to give special thanks to my colleague from Idaho for his role in developing this legislation. He has been very diligent and, as a former Mayor, very passionate about this issue. But he has also been willing to engage in the give and take that goes on in developing legislation where there are a lot of pressures from all sides to go one way or the other. This has truly been a bipartisan effort and he deserves special credit for that.

Chairman ROTH. Thank you, Senator Glenn. Mr. Exon.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. Mr. Chairman, thank you very much, and thank you very much, my Chairman of the Budget Committee, Senator Domenici, for those kind words and remarks.

I want to welcome the witnesses here this morning. I want to add my voice to those who salute Senator Kempthorne for his excellent work in this area. I was pleased to be a cosponsor of the bill yesterday, as I was the bill last year that unfortunately didn't get passed.

S. 1, by the fact it is the first legislative bill before the Senate, will be the first major piece of legislation and I predict it will pass the Senate. It is long past time that we act on this matter and I congratulate all of my colleagues who have played such a key role in this.

I would certainly say, Senator Domenici, that you and I have had a long working relationship. We don't always agree. The first thing that I would wish to bring to your attention since the Republicans took over yesterday is that for the first time when I used or tried to use the new subway system, it was broken down. I hope that is not any indication of the lack of cooperation that we are going to have during the next 2 years. [Laughter.]

Chairman DOMENICI. It was built under your regime, however.

Senator EXON. Yes, but it worked fine up until yesterday morning. [Laughter.]

I would simply say, in all seriousness, as one who had the opportunity to serve my State as governor for 8 years, I probably have as good an understanding of the obligations from the Federal Government to the State Government and the State Government up to the Federal Government. We are going to have some governors testifying here this morning.

At this time, Mr. Chairman, I would like to ask that, without objection, a statement by my governor, Governor Ben Nelson of Nebraska, who has been a leader in the States on this matter, be entered into the record at the appropriate point.

Chairman DOMENICI. Without objection, it will be.

Chairman ROTH. Without objection, it is so ordered.

[The prepared statement of Governor Nelson follows:]

PREPARED STATEMENT OF GOVERNOR NELSON

Mr. Chairman and Members of the Committee, I am E. Benjamin Nelson, Governor of Nebraska. I am submitting this testimony to you today as I am taking the oath of office and giving my inaugural address to begin my second term as governor. I apologize for my absence and I wish I were there in person to discuss this critical issue.

Last April, I testified before this same Committee on the burdens unfunded Federal mandates impose upon State and local governments and the need for relief and reform. At that time I supported the principles of S. 993, which are the same principles of S. 1. I reiterate what I said at that time: Federally imposed unfunded mandates are the single most important issue facing State governments today. State and local governments are operating with very few avenues left to absorb additional Federal mandates. Under present circumstances, we cannot in good conscience raise taxes and must realize the most cost-effective public sector possible to serve citizen taxpayer wishes. Unfunded Federal mandates continue to impose tremendous burdens, but we are making progress. I am very optimistic that we can take action which will continue the process of reform and rationalizing the regulatory system.

For nearly 2 years, I have been a leader and advocate for developing strategies to provide relief from unfunded Federal mandates passed down to State and local governments. The crux of the unfunded mandates debate is the imbalance of power toward the Federal Government.

Unfunded Federal mandates cost State and local governments billions annually. And possibly more importantly, Federal mandates usurp power from State and local leaders. Unfunded Federal mandates are simply a spending issue at the local level; and, without spending discretion, local leaders cannot pursue local priorities, the job which they were elected to do.

I made the conscience decision when I began my leadership and advocacy for national reform of mandated policies and reinstating federalist principles within the intergovernmental system that it was critical that I not only "talk-the-talk," but that I also "walk-the-walk." To this end, I have developed a two-tiered agenda for mandate relief and restoring balance between Federal and State governments. This agenda breaks down into short-term and long-term components.

The short-term includes focusing upon controllable factors at the State level, and maximizing flexibility within current statute, rules, and regulations. First of all, in January, 1994, I signed an Executive Order stating that Nebraska State agencies must include stakeholders, including local governments, early in the rules and regulations development process to insure unfunded mandates and cost shifting does not occur. Next, I convened an interagency working group of seven Nebraska State agencies with environmental and economic development responsibilities to develop an alternative compliance strategy to help communities more cost-effectively achieve compliance with unfunded environmental mandates. My direction to the group for development of the strategy was that compliance must be achieved, but it was the achievement of the goal that was important; not necessarily the process. I also instructed this group that intergovernmental cooperation is just as important as interagency cooperation, and that both Federal and local partners must be a part of this process. This interagency group has developed a strategy which focuses upon goal-based regulation, which prioritizes the most serious threats to the community first. The strategy defines threats to the community as threats to public health, threats to the environment, and threats to the long-term economic sustainability of the community. The strategy also includes provisions that non-compliance is not an option. Again, achievement of the goal is the point. By pursing a strategy such as this, we believe we can achieve a number of formerly mutually exclusive goals: linking regulation and economic growth and development; achieving cost-effective compliance by focusing on the most serious threats first; and most importantly, building partnerships and beginning to restore trust between various levels of government and between government and the citizen taxpayer which will allow us to truly solve problems efficiently and effectively.

This issue of partnerships and trust leads to my long-term agenda. Obviously, the compliance process described above can only serve to bridge the current gap. Customized compliance is not efficient or sustainable over the long-term. The key to long-term relief is fundamental national reform. National reform which includes reinstatement of federalist principles to the intergovernmental system and development of policies which include flexibility to encourage and pursue partnerships and trust.

Developing partnerships and reinstating trust are at the core of a proposal Utah Governor Mike Leavitt and I are co-sponsoring. The proposal, entitled the "Conference of the States," is intended to create a process which will allow thoughtful,

comprehensive discussion and analysis of changes that need to occur to the intergovernmental system to reinstate federalist principles and restore balance between Federal and State governments. The "Conference of the States" will allow, for the first time since 1786, the opportunity for State leaders to convene to discuss the appropriate role(s) of various levels of government. The "Conference" will facilitate a process whereby public policy is the key; not political posturing or maneuvering. Partisanship will not take center stage. The "Conference" will not address single or special interest causes; it will address strategies to allow States to define their rightful roles in the Federal system.

There are three reasons I have described my agenda for relief from unfunded Federal mandates and reinstating federalist principles within the intergovernmental system. The first is that we are using thoughtful, comprehensive approaches to developing goal-based solutions. The process I am leading in these initiatives is the only process which will allow for fundamental, pragmatic, long-term change to allow for fundamental, pragmatic, long-term change to allow the intergovernmental system to appropriately evolve.

The second is to point out the continued need for national reform and rationalizing the regulatory system. To this end, I support S. 1. I believe S. 1 will have significant and beneficial impacts upon State governments by increasing regulatory flexibility and rationalizing the regulatory system. It is based upon the principles I have laid out for my vision for mandate relief and restoring federalist principles to the intergovernmental system. I fully endorse this proposal, and have contacted my Congressional delegation members to urge their support.

The third and final reason is the sobering reality that a Federal balanced budget amendment which does not contain balance of powers provisions could become the single largest unfunded Federal mandate in history. Balancing the Federal budget deficit at the expense of State and local governments would be disastrous to those governments and to all citizen taxpayers. I would ask that States be given appropriate consideration in two specific areas when consideration is being given to the amendment: (1) protection against future unfunded mandates; and (2) assurances that State and local governments will be fairly treated in the Federal budget process and given additional flexibility in carrying out the responsibilities they are given under Federal legislation.

Thank you for this opportunity to present this information for your consideration.

Senator EXON. I would simply say that I would also like to ask unanimous consent that my full statement be submitted at an appropriate point in the record and simply say that we are moving. We are all part of the new revolution that is taking place. I am sorry that we didn't get this legislation passed last year, but the fact that we are giving it top priority this year on a bipartisan basis indicates that we are moving in a bipartisan fashion to try and help out some of the oppressive measures that have somehow snuck into the system over the years. We are on a course to correct that and I am very pleased to be a part of the bipartisan support in this effort that is going to move rapidly.

Thank you very much, Mr. Chairman.

Chairman ROTH. Thank you, Senator Exon. Senator Stevens.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Thank you, Mr. Chairman.

I join in hoping it will become the Kempthorne bill, but I would like to remind the Committees where this all started. In 1991, Congress passed a new environmental law that required cities to remove at least 30 percent of the organic waste from incoming sewage before treating it.

In my hometown of Anchorage, this was a real problem. The city's sewage inflow was often cleaner than treatment plan outfall would have been, and EPA refused to accept that analysis. The Anchorage officials found that the alternative to building a $135 million treatment facility was to get some fish processing plants to

dump 5,000 pounds of fish waste a day into the system, and then they took it out and EPA said that complied with the law.

This is an example of the types of foolish mandates that led the Conference of Mayors in 1992 to publish a mandates report which was presented to Congress by the mayor of Anchorage, Alaska, Tom Fink. That report was entitled "Paying for Federal Environmental Mandates: A Looming Crisis For Cities and Counties." Our new Senator and our great friend here from Idaho, as a former mayor, brought the issue squarely before us, and I think Congress has listened.

Mr. Chairman, I would hope that you would allow me to put into the record following my statement some of the comments that were made by the individual mayors in 1991 and 1992 on the so-called Fink Report.

Chairman ROTH. Without objection.

[The prepared statement of Senator Stevens with inserts follows:]

PREPARED STATEMENT OF SENATOR STEVENS

I was on the floor yesterday when the Senator from Idaho, Senator Kempthorne, introduced S. 1, his unfunded mandates bill. He sheparded his bill through the 103d Congress with great skill. I support my friend from Idaho's bill. And I salute the way this young senator has worked with the Chairman and Ranking Member of this Committee to get this bill introduced and started through the legislative process this year.

The former mayor of Anchorage, Tom Fink, compiled a report for the Congress in September of 1992. I ask to include excerpts from a copy of that report after this statement. It is entitled: "Paying for Federal Mandates: A Looming Crisis." Mayor Fink and other mayors from 49 States signed the report.

The Fink mandates report said:

> "In the past seven years, both the number and costs of these mandates have mushroomed. Tomorrow their costs may be intolerable. . . . Something must be done early in the 103d Congress to assure that environmental protection investments are made where they accomplish the greatest good. . . . We urge you to rely on the experience and expertise we have gained from implementing the vast majority of Federal environmental mandates in our communities."

As a former Mayor, Senator Kempthorne listed to what mayors from 49 States said in their report and brought the issue squarely before us. The Congress has listened, and the sponsors of this bill have broadened it to include all Federal mandates.

This bill's essence is to protect State and local governments from the onslaught of unfunded and inflexible mandates in the following ways:

- Mandates contained in bills will be accompanied by a Congressional Budget Office cost estimate, an authorization of funds to pay for the mandate, and an identification of those funds.
- The Congressional Budget Office will be required to consult with the local and State governments when producing their estimates.
- Without the above procedural steps, a point of order on consideration of the unfunded mandate rests. A majority vote can waive the point of order.

Our bill provides for deliberate examination of costs to establish full consideration by Congress of Federal mandates. It provides a mechanism for more informed decision making by the House and Senate. It provides a way for State and local governments to more closely monitor requirements that might be imposed on them. It also enlists agency responsibility in maintaining flexible and reasonable regulations.

In my judgment, S. 1 will be enacted and I pledge to help make its enactment a reality. The Nation is looking for the first Federal step toward systematically doing something about unfunded mandates. S. 1 is that step.

THE WASHINGTON POST

7/18/94

THE FEDERAL PAGE

Unfunded Mandates Occupy Center Stage

Senate Committee Crafting Bill to Relieve State and Local Governments of Costs

By William Claiborne
Washington Post Staff Writer

With billons of dollars at stake and a principle that goes to the heart of the federal-state relationship involved, the Senate Governmental Affairs Committee next week will try to resolve an issue that most Americans know little about.

The committee will begin marking up a bill to relieve state and local governments of unfunded federal mandates—the pass-along costs of complying with nearly 200 federal laws and regulations adopted since the mid-1970s.

It has been estimated that during the 1990s, state and local governments will spend more than $200 billon to comply with current federal waste water mandates alone. The state of Ohio expects to spend almost $3 billion complying with environmental mandates over the next decade, and New York City estimates it will spend $4.6 billion for unfunded mandates on ocean dumping and safe drinking water.

California estimates that the so-called Motor Voter Act, which mandates that states allow citizens to register to vote when they apply for or renew drivers licenses, will cost $26 million a year. Nationally, the estimated cost to state and local governments of implementing the voting regulations is $200 million to $250 million a year.

State advocates say that the federal social agenda—and the costs attached to it—is driving state spending priorities and bankrupting local budgets.

The question of unfunded mandates has simmered quietly in the shadow of health care and welfare reform and other high-profile domestic policy issues since the Clinton administration took office 16 months ago.

For nearly a year, governors, big-city mayors and state legislators have sought to turn unfunded federal mandates into a popular cause, staging protests on Capitol Hill and even declaring last Oct. 27 "National Unfunded Mandates Day," an observance that may be remembered most for its failure to capture the public imagination.

Nonetheless, it did inspire nearly two dozen House and Senate bills that seek to redress the local officials' complaint about Congress's penchant for adopting well-intentioned regulatory legislation, publicly taking credit for it and then dumping the costs of implementation on state, city and local governments.

Eight bills, ranging from "no money, no mandates" measures to more modest provisions that would simply require Congress to report the cost of its actions, are before the Governmental Affairs Committee, headed by Sen. John Glenn (D-Ohio).

The most prominent measure, introduced by Sen. Dirk Kempthorne (R-Idaho), former mayor of Boise, has the endorsement of 54 senators. It would require the federal government to pay the costs incurred by state and local governments in complying with federal laws and regulations.

A companion bill has been introduced in the House by Rep. Gary A. Condit (D-Calif.) and endorsed by 220 members.

A committee source said that Glenn does not yet have a strategy for handling the scheduled markup on May 26, but instead may report out a "clean" bill incorporating aspects of several of the proposed measures.

"Whatever comes out will be some sort of compromise," the committee staffer said, adding that the committee is waiting for the administration to take a position on the issue. He added, "They've been dragged kicking and screaming into this, but I think they realize now that they've got to come up with a position."

That view reflected a widely held belief among state and local officials that when Bill Clinton headed the National Governors' Association, he was more sensative to the effects of unfunded federal mandates than he is now.

"He says he feels our pain, but we're waiting for him to feel more than that," said one official of the U.S. Conference of Mayors, which has endorsed Kempthorne's bill.

However, Sally Katzen, administrator of the Office of Management and Budget's office of information and regulatory affairs, said the administration "clearly has heard the message that this needs to be resolved sooner rather than later."

Katzen noted that most unfunded mandates began with congressional action, and that Clinton and other administration officials were reluctant to publicly interfere "with the legislative branch conducting its business."

In testimony last month at a committee hearing, however, Katzen warned of some of the obstacles to mandate relief. "The administration is sympathetic to the concerns that are driving these bills, but we are troubled because they all appear to represent a narrow approach to what is a very complex, longstanding problem," she said.

Cities Find Ways to Comply When the Rules Don't Bend

In 1991, Congress passed an environmental regulation requiring cities to remove at least 30 percent of the organic waste from incoming sewage before treating it.

The rule stumped Anchorage, which could not meet the new standard because there was so little organic matter to remove in the first place. The city's sewage inflow, studies showed, was often cleaner than what the treatment plant was required to discharge. But the Environmental Protection Agency refused to bend.

Anchorage officials found an alternative to building a $135 million treatment facility: They invited two local fish-processing plants to dump 5,000 pounds of fish viscera into the sewer system. The fish waste was then removed, and the federal regulation met.

Columbus, Ohio, has a similar story. In order to comply with the Safe Drinking Water Act, Columbus spends thousands of dollars a year to test for 43 pesticides it knows it won't find in its drinking water, including one used only on pineapples in Hawaii.

Columbus, with a population of 663,000 and no pineapples, is one of the few cities that knows the cost of complying with federal regulatory mandates such as the Safe Drinking Water Act and the Clean Water Act: nearly $1 billon in the 1990s, or $685 per household per year.

Those costs could be reduced by recently approved legislation that would allow adjustments so local governments do not have to test for substances not likely to be found in their water.

—William Claiborne

SAMPLE MANDATES

- CLEAN WATER ACT: Regulates discharges into navigable waters, sets standards for improving water quality. $29.3 billion.
- SAFE DRINKING WATER ACT: Regulates drinking water standards. $8.6 billion.
- AMERICANS WITH DISABILITIES ACT: Requires accessibilty to public services and facilities. $2.1 billion.
- ASBESTOS ABATEMENT REGULATIONS: Cover inspection, removal and disposal of asbestos in buildings undergoing rehabilitation or demolition. $747 million.
- LEAD-BASED PAINT ABATEMENT: Laws cover inspection, reduction and disposal of lead-based paint in federally assisted housing. $1.6 billion.
- CLEAN AIR ACT: Governs air emissions. $3.6 billion.

SOURCE: U.S. Conference of Mayors

Pictured is the original Eagle City Hall, still currently in use.

Eagle is the oldest incorporated city in interior Alaska. (January 8, 1901)

CITY OF EAGLE — BOX 1901 — EAGLE, ALASKA 99738 1994 DEC 28 AM 11 23

December 20, 1994

Senator Ted Stevens
United States Senate
Washington, D.C.

Dear Senator Stevens,

HELP! HELP! HELP! Washington, D.C. is doing it to us again with their new impossible federally mandated non-funded regulations on our community drinking water.

The new required water tests would cost our community approximately $8,000 a year. How can we ever pay for it when our small community collects less than $8,000 a year in taxes? We are trying to get a waiver for some of the tests such as pesticides to bring the annual cost down to $4,000 a year. Just the waiver application, which would only be good for three years is costing us $2,000 which has not been included in our budget. We have other needs which require funding to keep our community safe and healthy which need to be met besides providing a safe water system.

We do not have a water or sewer system in our community, however we do maintain a well from which our residents can obtain their water. Our well was hand dug in 1903 and has been maintained since that date. The city has been having all of the necessary water testing done annually to assure a safe water supply.

As you can see, we do not have the resources to meet this new requirement. We have contacted the state DEC office, but they say they can do nothing, as all the new regulations are coming from Washington. WHAT CAN WE DO besides shutting down our city water supply which would be a lot unhealthier than our present system? I am sure there are many other small rural communities in Alaska having the same financial problem with these new regulations. Please let us know what we can about these new federally mandated unfunded regulations.

Sincerely,

Elva R Scott

Elva R. Scott, Mayor
Eagle City Council

PAYING FOR FEDERAL ENVIRONMENTAL MANDATES:

A LOOMING CRISIS FOR CITIES AND COUNTIES

Compiled for the United States Congress by

Municipality of Anchorage
Anchorage, Alaska

Tom Fink, Mayor

September, 1992

For release
January, 1993

Excerpts for Senator Stevens' Statement

Municipality of Anchorage

OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
TELEPHONE: (907) 343-4431
FAX: (907) 272-1991

Tom Fink, Mayor

January 15, 1993

Dear Member of Congress:

The enclosed study is about the costs of unfunded environmental mandates to cities and counties. In the past seven years, both the number and costs of these mandates have mushroomed. Tomorrow their costs may be intolerable.

Mayors from forty-nine states have signed this letter because we need your help. Something must be done early in the 103rd Congress to assure that environmental protection investments are made where they accomplish the greatest good. Although many members of Congress are aware of our concerns, the prevailing view still seems to be that "we just can't spend too much on the environment." This approach is shortsighted.

There is an urgent need for intelligent discourse about what will work and what won't. Not only do we sometimes pay too much to solve environmental problems, we've been known to confront the wrong problems for the wrong reasons with the wrong technology.

We urge you to rely on the experience and expertise we have gained from implementing the vast majority of federal environmental mandates in our communities. We want to be part of the solution and offer our assistance.

Enclosure: Paying for Federal Environmental Mandates:
A Looming Crisis for Cities and Counties

Mayors cosigning the January 15 letter to Congress regarding unfunded environmental mandates:

Michael C. Dow, Mobile, Alabama
Tom Fink, Anchorage, Alaska
Ralph Bartholomew, Ketchikan Borough, AK
Ernest Brannon, Mat-Su Borough, Alaska
Glen Alsworth, Lake & Peninsula Borough, AK
Dan Keck, City and Borough of Sitka, Alaska
Quentin Tolby, Glendale, Arizona
Herbert Drinkwater, Scottsdale, Arizona
Carolyn Robinson, Pine Bluff, Arkansas
Mary Andrews, Chico, California
Patricia Wallach, El Monte, California
William "Bill" Ball, Fremont, California
Walter Donovan, Garden Grove, California
Richard A. Lang, Modesto/Stanislaus, California
David W. Smith, Newark, California
W.R. "Bob" Holcomb, San Bernardino, California
Susan Golding, San Diego, California
Patricia Castillo, Sunnyvale, California
Paul E. Tauer, Aurora, Colorado
Linda Morton, Lakewood, Colorado
Fay Kastelic, Pueblo, Colorado
Sebastian J. Garafalo, Middletown, Connecticut
John Daniels, New Haven, Connecticut
Stanley Esposito, Stamford, Connecticut
Daniel S. Frawley, Wilmington, Delaware
Stephen P. Clark, Dade County, Florida
Lawrence Kelly, Daytona Beach/Volusia, Florida
Mara Giulianti, Hollywood, Florida
Edward Austin, Jacksonville, Florida
Frank J. O'Reilly, Lakeland, Florida
Julio J. Martinez, Miami, Dade County, Florida
Charles A. DeVaney, Augusta, Georgia
Frank K. Martin, Columbus, Georgia
Frank F. Fasi, Honolulu, Hawaii
Dirk Kempthorne, Boise, Idaho
Thomas V. Campbell, Idaho Falls, Idaho
Peter J. Angstadt, Pocatella, Idaho
Leroy Campbell, Emmett, Idaho
George VanDeVoorde, Elgin, Illinois
Erik K. Brechnitz, Decatur/Macon, Illinois
Von Doe Cruse, Granite City, Illinois
Paul Helmke, Fort Wayne, Indiana
Larry Serbousek, Cedar Rapids, Iowa
Norlyn Stowell, Emmetsburg, Iowa
Bob Beat, Shawnee, Kansas
Harry Felker, Topeka, Kansas
Bob Knight, Wichita, Kansas
Denny Bowman, Covington, Kentucky
David C. Adkisson, Owenaboro, Kentucky
George Van de Voorde, Elgin, Illinois
Edward G. Randolph, Jr., Alexandria, Louisiana
Hazel Beard, Shreveport, Louisiana
William D. Burney, Augusta, Maine
Stephen P. Sager, Hagerstown, Maryland
Tarsy T. Poulios, Lowell, Massachusetts
Robert Markel, Springfield, Massachusetts
Woodrow Stanley, Flint, Michigan
John S. Coppage, Midland, Michigan
Wallace E. Holland, Pontiac, Michigan
Stephen Rice, Sterling Heights, Michigan
Ronald Bonkowski, Warren, Michigan
Harold J. Voorhees, Wyoming, Michigan
Ernie Linton, LeRoy, Minnesota
Chuck Hazama, Rochester, Minnesota
Pete Halat, Biloxi, Mississippi
Ken Combs, Gulfport, Mississippi
Kane Ditto, Jackson, Mississippi
Bernie Johnson, Joplin, Missouri
Richard L. Larsen, Billings/Yellowstone, Montana
Jack Lynch, Butte-Silver Bow, Montana
Daniel Kemmis, Miasoula, Montana
Ernest Dobesh, Grand Island, Nebraska
P. J. Morgan, Omaha, Nebraska
Marv Teixeira, Carson City, Nevada
Lorna Kesterson, Henderson, Nevada
James K. Seastrand, North Las Vegas, Nevada
W. Samuel Pick, Santa Fe, New Mexico
Richard Vinroot, Charlotte, North Carolina
Bill Sorensen, Bismarck, North Dakota
Greg Lashutka, Columbus, Ohio
David J. Berger, Lima, Ohio
John McHugh, Toledo, Ohio
Marilyn Swope, Zanesville, Ohio
Phil Todd, El Reno, Oklahoma
Gussie McRobert, Gresham, Oklahoma
Tom Autry, Watonga, Oklahoma
Gary D. Rader, Weatherford, Oklahoma
Glenn Taylor, Hood River, Oregon
R. G. Anderson-Wyckoff, Salem, Oregon
Joseph S. Daddona, Allentown, Pennsylvania
Guy Buell, Fairview Boro, Pennsylvania
George Ainsworth, Union City Boro, Pennsylvania
Albert Shields, III, Waterford Boro, Pennsylvania
S. Gene Combs, Wattsburg, Pennsylvania
Charles J. Donovan, Warwick, Rhode Island
William Workman, III, Greenville, South Carolina
Robert G. Rowell, Spartanburg, South Carolina
Gary Drewes, Pierre, South Dakota
Joe B. Jackson, Murfreesboro, Tennessee
William N. Morris, Shelby County, Tennessee
Richard Greene, Arlington, Texas
Joe D. Hermes, Edna, Jackson County, Texas
Mary Rhodes, Corpus Christi, Texas
Bob Smith, Garland, Texas
Peggy Traber, South Padre Island, Texas
Ted B. Reed, Victoria, Texas
Harold Grant Shirley, Cedar City, Utah
James J. Layton, Layton City, Davis Co., Utah
Russell F. Fjeldsted, Logan, Utah
Ann E. Cummings, Montpelier, Vermont
Julian R. Adams, Lynchburg, Virginia
Meyera E. Oberndorf, Virginia Beach, Virginia
Gloria O. Webb, Portsmouth, Virginia
S. Chris Jones, Suffolk, Virginia
Louis Mentor, Bremerton, Washington
Helen G. Albright, Parkersburg, West Virginia
Patrick T. Zielke, La Crosse, Wisconsin
Michael Corrigan, Casper, Wyoming
Gary Schaeffer, Cheyenne, Wyoming
S. J. Collins, Gillette, Wyoming

VI. CONCLUSION

Finding Solutions

The United States Congress has, over time and with good intentions, contributed to the problems referenced in this paper. It is up to Congress to find solutions to them. If they are to be workable solutions, however, the elected leaders of America's communities must be involved in the problem solving process.

Fortunately, Congress and the administration, encouraged by EPA Administrator Reilly, now recognize the role that better risk assessment methodologies can play in setting environmental priorities. Both appear to be devoting more resources toward establishing a more rational, risk-based regulatory framework. From local government's perspective, the outcome can occur none too soon.

Private organizations devoted to policy analysis, such as the Center for the Study of American Business, the Institute for Regulatory Policy, the National Chamber Foundation, Harvard's Center for Risk Analysis, the National Research Council's Committee on Risk Assessment Methodology and others have made significant contributions to the debate. So have a sizable group of scientists, medical professionals, attorneys and industry leaders who have studied and published their findings.

Of particular note are the research and policy recommendations of the Institute for Regulatory Policy which has crafted a presidential executive order, being widely endorsed, as a workable approach for making risk assessments and risk management decisions more objective, more understandable, and more consistent among all federal agencies.

However, before a more responsible, cost-effective environmental policy can be crafted, national leaders must find answers to these questions:

(1) How much environmental protection are communities already obligated to fund? What measures can be used to determine if they can afford additional requirements?

(2) What recourse should communities have when congressional or administrative projections of local implementation costs are drastically understated? Should Congress set dollar limits at which it must reconsider inaccurately-costed measures?

(3) Do all communities face the same environmental problems? If the answer is clearly "no," how can fairness and flexibility be built into the regulatory process?

(4) Is Congress encouraging communities the flexibility to address their most important environmental priorities? If not, why not?

(5) Should Congress force communities to "throw good money after bad" when new science disproves or renders obsolete a legally-mandated rule or procedure? How can bad rules be undone?

(6) If the cost-per-predicted-premature-death of a measure is excessive, what criteria can Congress use to decide whether compliance should be required? Who should decide the threshhold limits of "excessive"?

(7) Substantial progress has occurred in developing techniques for measuring the costs of environmental regulations. What efforts should be undertaken to more effectively measure the benefits of regulations?

(8) How can risk analysis be applied to formulate new direction for environmental policy in the 1990s? What actions are needed to accelerate current efforts to set environmental priorities based on sound risk analysis policy?

(9) If 95% of a problem has been solved, should large amounts be spent on the remaining 5%? Or, should those dollars be redirected to where they will be more cost effective?

(10) How will Congress resolve the growing conflict between humans and species, e.g., habitat protection vs. jobs, or protection of the ethereal ideal of biodiversity vs. clearing land for housing?

(11) Assuming the "takings" provision of the U. S. Constitution is to be upheld, what mechanisms can Congress establish to both protect private and local government property rights and acquire property for environmental purposes?

(12) And, finally, should Congress impose a moratorium on new mandates until a national environmental policy is crafted, with input and review by the governing entities responsible for implementing it?

Anchorage

VII. COSTS OF FEDERAL ENVIRONMENTAL MANDATES

A. Scope of Study, Municipality of Anchorage: 1991 - 2000

In 1992, the Municipality of Anchorage reviewed the major federal environmental programs it administers to determine their long-range impacts on the municipal budget. The study was prompted by two events: (1) the municipality's dismay over projected costs of municipal stormwater permits, wherein the city experienced a thirty-fold increase over EPA's projected costs, and (2) a 1991 study by the City of Columbus, Ohio on its environmental mandate costs.

In the same timeframe, the city faced a depleted snow removal budget from the winter's unusually heavy snowfall. Officials agreed, from a common-sense, human safety standpoint, snow removal was a significantly higher priority than testing stormwater runoff. That view was reinforced when the permit consultant's testing revealed the only "significant" pollutant in the stormwater system was soapsuds from residential car washing. Regardless, officials lacked authority to appropriate funds in accordance with their best judgment; the stormwater permit was an enforceable mandate.

The Municipality still does not know the requirements it may face for groundwater runoff remediation. In response to concern for the future costs of this program, plus numerous others not yet at the costing stage, the study was launched.

Conclusions from the data are not intended to reflect a position for or against environmental protection mandates, or to suggest the municipality is paying too much or too little for these programs. To date, a cost/benefit analysis has not been undertaken to address such questions, primarily because of the lack of expertise to do so, and cost considerations.

The Anchorage study, while intended to be far less detailed, was patterned after that done by the City of Columbus, Ohio, which provided assistance and a suggested format. Communities wishing to isolate their own environmental program costs may contact the City of Columbus for guidance. They will find the format, text and tables Columbus provided very useful, as have numerous other communities.

The Columbus study addressed both state and federal environmental mandates, while the Anchorage study covers only federal mandates. Following are the major environmental laws and abbreviations used in the Anchorage study.

Budget Categories: Budget categories included were personnel, supplies, other services, equipment and capital expense for each utility and municipal department. State or federally-funded projects and personnel were not included, although municipal matching funds for those projects were.

Under its present accounting system, the municipality's environmental programs are not differentiated from other programs. Budget officials are considering ways to classify them in the future, however.

Study Observations: While Anchorage's costs are significant, they should not be viewed as representative of other cities or counties for several reasons.

(1) Anchorage is a non-industrial community (approximately 2% of its economy consists of manufacturing), with a medium-sized (240,000 residents), affluent population.

Stresses to its environmental systems were negligible compared to those in commercial/industrial localities.

(2) Anchorage is a relatively young municipality. Less than 80 years old, its major growth occurred in the last two decades, when national and state environmental laws were well established. It was not burdened with a maze of antiquated systems requiring reconstruction, retrofitting or replacement as older cities have been. In some instances, it was possible to build new state-of-the-art systems when regulations required them. Whenever possible the systems were also designed to accommodate additional population growth.

(3) The municipality also maintained an advantage with regard to its sources of funding for environmental mandates. Tax and royalty revenues from Alaska's oil production made it possible for state government to finance local facilities and programs normally funded by communities themselves.

However, the general economic climate and declines in petroleum exploration and production have significantly reduced the availability of these funds for future public uses. Petroleum industry interest in Alaska continues to wane, largely due to excessive cost and regulatory burdens, and lack of congressional approvals to explore the most promising prospects. New federal oil spill liability legislation will likely cost the owner companies of the Trans-Alaska Oil Pipeline more than $50 million annually. These costs will reduce petroleum revenues paid to the State of Alaska each year, funds that could have been dedicated to statewide environmental programs.

Environmental Compliance Costs of Existing Regulations

Study Results: Estimated costs of federal environmental regulations to the Municipality total $429,936,737 for the 1991-2000 period, inflation-adjusted at the prevailing 7% rate for environmental projects. In general, the figures represent costs of complying with existing regulations. If reliable cost estimates were available for regulations not yet in place, those figures were included. However, virtually all department heads were reluctant to include estimates they could not reasonably substantiate.

Clean Water Act compliance is the most expensive program, accounting for 36% of real and projected costs. In second and third place are Clean Air at 34% and Resource Conservation and Recovery Act costs at 21%.

The Environmental Protection Agency reports that land-related compliance costs to local governments are projected to increase in future years at higher rates than for clean air and water programs. However, it is difficult to make such comparisons for Alaska. For example, the hundreds of air quality rules yet to be promulgated may require sophisticated laboratory, fabrication and consultant services that may not be available within the state.

While the EPA anticipates local government costs will increase by 60% to 120% in the 1990s, it is not clear whether these percentages relate to the costs of doing business in Alaska. Nor is it clear which laws and regulations are included in the projected increases.

Senator STEVENS. I applaud both of you Chairmen for calling this hearing so quickly and look forward to working with you on the subject.

Chairman ROTH. Thank you, Senator Stevens.

Senator Grassley.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. Mr. Chairman, I am looking forward to the new Congress. I am looking forward to an opportunity to make very dramatic changes in Government and I am looking forward to doing that through the great contributions that this Committee can make to that effort.

One of the biggest changes that Congress will make is to be more accountable, and there is a bill on the Senate floor this morning authored by me called the "Congressional Accountability Act." The bill is S. 2. It will make Congress subject to the same laws we pass for the rest of the country.

The bill before this Committee, S. 1, the Kempthorne bill, is also an effort to bring accountability to the Federal Government. It says that Washington cannot pass the buck without passing the bucks to do the job. So we must ensure that this legislation does the job, that it is not just a political exercise. This issue is too important to the American people and our governors and the mayors to not enact real reform, and this is our opportunity to do just that.

I have some concerns that I will bring out during the discussion with the witnesses, during the question and answer portion, my concerns about the legislation going far enough.

I yield the floor.

Chairman ROTH. Thank you, Senator Grassley.

I might point out that Senator Grassley is the only Member who is a Member of both of these Committees. We are happy to welcome him as a new Member of Governmental Affairs.

Next, I would call on Senator McCain.

OPENING STATEMENT OF SENATOR McCAIN

Senator MCCAIN. Thank you, Mr. Chairman.

I would like to thank Senator Kempthorne and also Congressman Portman for being here today. I especially applaud those individuals for their enormous efforts on behalf of this very important piece of legislation. I think it is clear that we are nearing success.

Last month, Mr. Chairman, I had a meeting with all of the mayors in the State of Arizona. I then had a meeting with all of the county supervisors in the State of Arizona. The dominant and overriding issue for those mayors and county supervisors, as we know is the case with the Nation's governors, is this issue. That is why I think it is appropriate that it be the first issue that we address, and I believe their real concerns about their ability to provide important services to the people they represent is embodied in their zeal for the passage of this legislation.

I would just like to make two additional points. One, I hope that Senator Kempthorne and Congressman Portman can reassure the disabilities community here today. There are deep and serious concerns amongst the disabilities community that this legislation will prevent the kind of services that are required to take care of those

less fortunate than we are in our society, and I hope that that part of this overall legislation will be addressed.

Finally, Mr. Chairman, I have concerns about the lack of application of this law to the appropriations bills. I know that points of order lie against appropriations bills, but all too often, I see legislation enacted on appropriations bills, and when this bill reaches the floor I intend to offer an amendment to make this legislation applicable to appropriations bills as well as authorizing legislation.

I thank you, Mr. Chairman, and again, my sincere thanks to Senator Kempthorne and Congressman Portman. Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Senator McCain.

Senator Bond has agreed to wait and permit Senator Cohen to proceed next.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you, Mr. Chairman.

Thank you, Senator Bond.

Mr. Chairman, I would like to submit my formal statement for the record and just offer a few comments.

Back in 1982, John Nesbitt wrote his first book called "Megatrends." There were a number of things that caught my attention in that book, but particularly something in bold print. It said that it doesn't matter who the President is and Congress is becoming obsolete.

I think it is that feeling of anger, that we don't really understand what we are doing to people, that we are legislating without regard to the burdens we are placing on our citizens, which is evident in the broad support for this legislation.

I happened to be mayor of my hometown city of Bangor, Maine, almost 24 years ago, and I had to contend with a number of regulations, but never with the Safe Drinking Water Act, the Americans with Disabilities Act, the Clean Air Act, and so many others that have been passed since that time.

Perhaps the anger and frustration came out most clearly to me when the mayor of another city in Maine recently expressed his frustration and anger by saying that we are going to have the cleanest water in the State of Maine and the dumbest children. It was a very provocative statement but it expressed his anger and frustration that he couldn't possibly measure up to all of the mandates and pay for them. That is something, I think, that Senator Kempthorne has brought very clearly to the attention of all the Members.

The simple answer would be, of course, to exempt all State and local governments from laws and regulations. Very few people are recommending such drastic or radical action. The fact is that people don't want mercury in their water. They don't want toxic wastes in the soil. They don't want to ignore the needs of the disabled.

We have to find a balance, and as one of the witnesses testifying this morning has pointed out, it seems that there are two questions that have to be asked: What should Government do, and what level of Government should do it?

We have passed legislation called "Truth in Lending" and "Truth in Sentencing." S. 1 should be classified or labeled "Truth in Legislating." If it is good enough to pass, then it is good enough to pay for, and if we are not willing to pay for it, then it shouldn't be passed. I think that is the essence of what Senator Kempthorne has brought forward with this legislation, along with Senator Glenn and the Chairman and others, and I strongly support its passage. Thank you, Mr. Chairman.

[The prepared statement of Senator Cohen follows:]

PREPARED STATEMENT OF SENATOR WILLIAM S. COHEN

I am very pleased that the important issue of unfunded Federal mandates is a top priority in this new Congress. I commend the chairmen for moving so quickly on S. 1 which I am pleased to cosponsor.

S. 1 builds upon the efforts of this Committee, Senator Kempthorne and others in the 103rd Congress to address the significant financial impact that unfunded Federal mandates have upon State and local governments. As many will recall, last summer the Governmental Affairs Committee reported out an unfunded mandates bill that unfortunately was not passed by the Senate prior to adjournment.

As a former mayor, I understand the difficulties that mayors, selectmen, town managers, and other officials encounter when they are faced with an enormous number of requirements and little money to pay for them. I recall the tough decisions that confronted me when I served as mayor of Bangor in the 1970's. And yet, I did not have to deal with the Safe Drinking Water Act, Superfund, and many other complex laws that currently confront local officials.

The demands placed on local officials today from constituents on one side, and from Federal and State governments on the other, are often in conflict, and the resources are often not available to address these growing demands. Clearly, greater restraint and sensitivity must be shown by Congress in the consideration of new mandates unaccompanied by funding. Congress cannot burden local governments and taxpayers with mandates that they cannot afford.

We must also work to mitigate the burdensome effects of current mandates. For example, Bangor officials estimate that unfunded mandates will cost the city about $2 million a year for 15 years. Water rates, due to a new $25 million secondary wastewater treatment plant required by the Clean Water Act, are increasing as much as 20 percent a year.

Finding the best way to relieve the financial burdens associated with Federal laws, however, is not easy. The simplest way would simply be to exempt local governments from laws such as the Americans with Disabilities Act and the Safe Drinking Water Act. Few are suggesting such a radical approach. The issue, therefore, is how best to pay for the costs associated with these and other Federal mandates.

State and local government officials are right to criticize Congress for passing laws without fully appreciating the costs associated with them. We appropriately hear the same argument from businesses. There is no free lunch. There are costs associated with the Americans with Disabilities Act, Safe Drinking Water, and other laws. Congress has an obligation to minimize these costs for taxpayers and to work with local governments to make sure that the proposals are feasible.

This issue cuts to the heart of the broader debate over federalism and the appropriate role of the Federal Government with respect to State and local governments. As one of today's witnesses, Governor Voinovich, and others have remarked, a serious debate has begun on two bedrock questions: What should government do, and what level of government should do it? The unfunded mandates issues is so powerful because it is at the center of this debate. There is a strong and justified sense among voters that Washington does not have all the answers and that decision-making should more often be left to State and local governments.

In the past, I have supported legislation that would give communities more decision-making ability and flexibility in complying with unfunded mandates. In the 102nd Congress, I was an original cosponsor of the Small Town Environmental Planning (STEP) Act, introduced by Senator Jeffords, which would have allowed small communities to prioritize among the environmental mandates they faced. The STEP Act would have assisted small communities in assessing the requirements and costs of environmental mandates, and given them more time to comply. Some provisions of the STEP Act were incorporated into legislation that was passed by Congress.

I have also supported repealing the Davis-Bacon law that requires State and local governments to pay prevailing wages for construction projects. This is very burdensome for them, and represents the most onerous form of unfunded mandate—telling States what wages they must pay. I also opposed motor-voter law which is now requiring States to provide voter registration when a citizen receives a drivers license. While I support the idea of States expanding voter registration through programs such as motor-voter, I believe the strict and costly mandates that this Federal law imposes are unnecessary. States, not the Federal Government, should be setting these policies.

Fundamentally, S. 1 could be characterized as a "truth-in-legislating" act. It requires the Senate to make known and directly consider the financial impact of any unfunded mandates that might be proposed. S. 1 requires committees to find the money to pay for mandates or face a point of order on the Senate floor. Members will be clearly accountable for their support, or lack of support, for a bill containing unfunded Federal mandates.

I am pleased that the issue of unfunded mandates has been made a high priority by the leadership and this Committee. As a supporter of the bill that Senators Kempthorne and Glenn brought before this Committee last year, I hope that S. 1, similar in many ways to last year's bill, will be considered in markup in the very near future. I look forward to the testimony of today's witnesses and to the timely consideration of this important issue by the full Senate.

Chairman ROTH. Thank you.

Senator Bond.

OPENING STATEMENT OF SENATOR BOND

Senator BOND. Thank you very much, Mr. Chairman.

To both Chairs and to our Ranking Members, I want to express my sincere appreciation and congratulations that we are making this the No. 1 measure to consider. The people of America asked for a new day. I am delighted that we are here working on a bipartisan measure on something that I think is badly, badly overdue.

I was governor of my State in the early 1980's and I had previously served as governor in the early 1970's, along with our distinguished Ranking Member. I will tell you, my good friend from Nebraska, that the real difference that I saw between the 1970's and the 1980's was the growth of unfunded mandates. Our State was literally strangling on expenditures that were required by the Federal Government. One of the things that I had hoped to do when I came to this body in 1987 was to go to work on something like this. It has taken us 8 long years to get here, but at least we are here now.

The State of Missouri has become so concerned that they established by law an annual unfunded Federal mandate report. That report comes out in December of each year, and the report shows that for 1994, the State of Missouri experienced costs of $205 million in unfunded Federal mandates, a 57 percent increase in 2 years.

Unfortunately, the State projects that the unfunded mandate costs for the current year will exceed $252 million. These are costs that have been documented with respect to specific measures. The Clean Air Act cost in 1997 two-thirds of a million dollars. Total environmental mandates are estimated only at $3.5 million. But the Carl Perkins Vocational Education Act costs the State $16 million in unfunded Federal mandates, and the Department of Social Services, as one would expect, was the big winner, having the privilege of spending almost $130 million of a very limited budget to comply with Federal mandates.

It is for these reasons that the U.S. Conference of Mayors, the National Association of Counties, the National League of Cities, the International City Management Association declared October 27, 1993, "National Unfunded Mandates Day" to protest.

I see my colleagues and friends from the National Governors Association here actively cheering on this effort. This is a measure which is of vital importance not just to local and State elected Government officials but to the people they serve, and it is for this reason I add my thanks and congratulations to Senator Kempthorne and Congressman Portman. I hope that we can move expeditiously.

Chairman ROTH. Senator Gorton.

OPENING STATEMENT OF SENATOR GORTON

Senator GORTON. Mr. Chairman, it is a real tribute to the single-mindedness and purpose and drive of Senator Kempthorne, and, I suspect, to the justice of the cause that he represents here, that at the beginning of his second Congress, his bill is S. 1.

The fact that it is S. 1, I think, means the chances for its success, the success of a restoration of a degree of responsibility to a principle of federalism, to what each level of Government ought to do, will, in fact, become law.

I think, Senator Kempthorne, that your fellow mayors from all over the country will be particularly delighted that the City of Boise has sent you to this place to save not only your city but others, and States as well, from these unfunded mandates.

Chairman ROTH. Thank you.

Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman. First, let me add my congratulations to Senator Kempthorne for his persistence in an area where I think sensitivity is long overdue.

I used to be a local official. I was president of the city council just before I came here, so I am very much aware of the problem of unfunded mandates. I know what pain can be caused, what harm can be done when the Federal Government imposes mandates on State and local governments without the funds to pay for those mandates, so I start with a very deep sympathy on the part of State and local governments to say, let us stop it.

You shouldn't be allocating our tax dollars here at a local level, and we should not be mindlessly imposing burdens on State and local governments to meet needs that we think are priority needs at a national level but they haven't identified as priority at a State and local level. For that matter, we shouldn't be mindlessly imposing burdens on anybody in the public sector or the private sector at the State and local level.

So we should make sure that we act with our eyes open when we legislate as to what the burdens and impacts are on people that are affected by our legislation.

One solution is to say, if there is no money, there is not going to be a mandate. That is one solution. That is a rhetorical kind of approach which has been used.

The bill before us does not do that. The bill before us doesn't say, if there is no money, there will be no mandate. It is a much more carefully thought out bill than that.

For instance, the bill before us has a whole host of exceptions to the presumption which is created that without money there will be no mandate. The bill apparently, and I say apparently because this bill was just introduced, I think, yesterday.

And by the way, Mr. Chairman, I think that in fairness to the legislative process, that there should be a couple days after a bill of this magnitude is introduced before it is marked up. I have to tell you that frankly. That is what the rules provide, that we have notice of markup. It is there in order to protect people, to have a chance to look at a significant piece of legislation, to determine if they want to amend it. So I would hope that we would at least have a few days that we can look at the language. My comments are based on what I understand to be the language.

I understand the bill does not cover the following situations with any kind of a presumption of no funding, no mandate. If a bill enforces the constitutional rights of individuals, anti-discrimination laws involving race, religion, creed, gender, and so forth, that even though there is a mandate that the funding to implement it need not be there, no presumption would be created.

A bill that requires compliance with accounting and auditing procedures with respect to money or property provided by the government. A bill that provides emergency assistance or relief at the request of any State, local, or tribal Government. A bill that is necessary for national security. A bill that is designated as emergency legislation. A bill that eliminates a Federal program, that is aimed at solving a particular social or economic problem.

By the way, I hope that State and local governments will really focus on that, not just the unfunded mandates issue, because what is coming is going to be the Federal Government moving out of a whole bunch of areas, leaving States and local governments with 10-aspirin headaches and about 4 aspirins to meet the headaches with. That is going to be the largest headache that the local and State governments are going to be having, much more than the unfunded mandates because there are going to be a heck of a lot fewer mandates, hopefully, coming from Washington.

But in any event, this bill, from what I understand, contains a host of exceptions to the presumption, and I think that it should and I think the sponsors of the bill have attempted, from the outlines that we have seen, to exempt certain situations from the presumption.

Even if those exceptions are not present, as I understand the language, it is still not going to be the rule that if there is no money, there will be no mandate, because the Congress would still have to, in each bill, put in language which says that a mandate will not be implemented in the absence of money to pay for it. That language must appear in the bill imposing the mandate, and if the language is not there, then the mandate will be enforced on State and local governments. So Congress will have to act to put the language in the bill.

What your proposal does, as I understand it, is to say that if the language is not there in the bill, a point of order will lie, and then

a majority of the Congress will determine whether or not in a specific case there will be a mandate without money. We will then be forced to address the issue, and I think that that is a fairly good approach, as I understand it.

But we should be clear that we not tell folks at a State and local level that, hey, you can assume from here on out if there is a mandate, there is going to be money to fund it, because that would be an overstatement of what is in this bill.

What the bill does is say that with certain exceptions, there is a presumption that if there is no money, there is not going to be a mandate, but the language must still be in each bill enforcing the mandate and the enforcement mechanism is that if it is not in there, a point of order will lie. And I think, again, that is a thoughtful approach, but it is different from a no money/no mandates approach. It is more complicated than that. It is more balanced than that.

Mr. Chairman, I think I have probably taken more time than perhaps I should, and I would just simply close with a couple of other comments.

There are a number of question marks for me in this bill.

Chairman ROTH. I would ask if the Senator could be brief.

Senator LEVIN. I will withhold, then, the questions that I have based on the outline for my question period.

Chairman ROTH. Thank you.

I understand Congressman Portman has to return to the House side for an organizational meeting of the Ways and Means Committee, so with everybody's patience and understanding, I would like to call on him to make his remarks at this time.

Mr. Portman, it is a pleasure to have you here.

TESTIMONY OF HON. ROB PORTMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. PORTMAN. Thank you, Mr. Chairman. It is a pleasure to be here. Members of both Committees, Mr. Chairman, I am very honored to be here to speak on the subject of legislation designed to curb the practice of imposing Federal mandates on State and local governments. The good news for you is that because the House can't seem to keep the civilized hours that you kept in this chamber over the last 24 hours, I have not had much sleep. I was awake until a few hours ago, and thus will keep my comments very brief this morning.

First, I would like to commend the extraordinary efforts that have been made by Members of these two Committees and their staffs in drafting S. 1. I would like to say it has been a particular pleasure for me and my staff to have worked very closely with Senator Dirk Kempthorne, over the last several months in crafting responsible and strong legislation for both the House and the Senate. I applaud your joint efforts to move so expeditiously on this issue that is a vital concern to our State and local officials and the constituents that we all represent.

I am here to report this morning that the House is also committed to moving the legislation in short order. As many of you know, unfunded mandates legislation was included in the Contract with America, and yesterday, I joined Congressman Bill Clinger, Con-

gressman Gary Condit of California and Congressman Tom Davis in introducing companion legislation to S. 1 in the House. Chairman Clinger of the new House Government Reform and Oversight Committee has scheduled a markup for next Tuesday.

We in the House share your firm commitment to have a bill ready for the President's signature within a very brief period of time.

In my view, Mr. Chairman, S. 1 represents a very thoughtful, effective, and bipartisan approach to bringing the needed relief to State and local governments which have been burdened, as you know, by an increasing number of unfunded Federal mandates.

S. 1 and its House companion are in large part based on the provisions which were included in S. 993, which, thanks to the effective leadership of Senator Glenn, my colleague from Ohio, and Senator Roth, passed the Governmental Affairs Committee on a bipartisan basis last year, and also on the basis of H.R. 5128, which passed the Government Operations Committee on the House side overwhelmingly last year.

We all have heard stories from our constituents about the way unfunded Federal mandates force State and local governments to revamp their budgets, to reorder their priorities, and in many cases, to reduce vital services and/or increase taxes.

I received a letter, as an example, last month from Mark Shockman, Fire Chief of the Clearcreek Fire District, located within my Congressional District. He wrote that unfunded Federal mandates "are having strong impacts on our ability to provide emergency and non-emergency services to our customers and your constituents."

Put simply, as Senator Glenn and others have already said so well this morning, I believe it is an abuse of power for the Federal Government to impose mandates on State and local governments with no understanding of or concern for the impact of such mandates on local jurisdictions. These local governments clearly have the right to set their own priorities and to work out their own budgets without fear that a new set of costly priorities might be sent down from Washington.

As you may have already noted, S. 1 contains certain provisions that relate exclusively to procedures in the House of Representatives. These are included to recognize differences that exist between the two chambers in parliamentary procedures and to achieve parity between the House and Senate in the implementation of this legislation. We appreciate your considering that language in your bill on this side.

The bill includes language designed explicitly to preserve the point of order against unfunded mandates that might otherwise be waived by our House Rules Committee. It also retains the right of House Members to move to strike any such mandate. Finally, the bill amends the House rules to require the Rules Committee to disclose any points of order that might be waived against unfunded mandates. I think this is extremely important for the House side.

In closing, I would like to again express my appreciation for the bicameral cooperation to date. On both sides of the Capitol, I think extraordinary efforts have been made to address the concerns that have been raised by earlier drafts of this legislation. I believe that

working with State and local officials, we have ended up with an effective and fair approach to this problem.

As you will hear today, under the leadership of Governor Voinovich from Ohio and others, this bill has the very strong support of the Big Seven, the national organizations representing Democratic and Republican elected local and State public officials.

As many Senators have expressed this morning, this is good government legislation at its best. It brings greater responsibility and accountability to the legislative process. I am very proud to have been involved in the effort. I am grateful to have been given the opportunity this morning to share my thoughts with you, and I look forward to continuing to work with the distinguished Members of these two Committees and with Dirk Kempthorne in enacting a common-sense solution to this growing crisis in the Federal-State-local relationship. Thank you, Mr. Chairman.

[The prepared statement of Mr. Portman follows:]

PREPARED STATEMENT OF REPRESENTATIVE PORTMAN

Chairmen and Members of both Committees, I am honored to be before you to speak on the subject of legislation designed to curb the practice of imposing Federal mandates on State and local governments.

The good news for you is that, because the House cannot keep the type of civilized hours that you do in this chamber, I was up until a few hours ago and, thus, promise to keep my remarks this morning very brief.

First, I would like to commend the extraordinary efforts that have been made by Members of these two Committees and their staffs in drafting S. 1, the Unfunded Mandate Reform Act of 1995. It's been a particular pleasure for me and my staff to have worked closely with Senator Kempthorne and his staff over the last year in crafting responsible and strong legislation for both the Senate and the House. I applaud your efforts to move so expeditiously on this issue of vital concern to our State and local officials and the constituents we all represent.

The House is also committed to moving the legislation in short order. Yesterday, I joined with Representatives Bill Clinger, Gary Condit and Tom Davis in introducing companion legislation to S. 1 in the House. We in the House share your firm commitment to have a bill ready for the President's signature within a very brief period of time.

In my view, S. 1 represents a very thoughtful, effective, and bipartisan approach to bringing the relief needed to State and local governments, which have been burdened by increasing numbers of unfunded Federal mandates. As you know, S. 1 and its House companion are in large part based on provisions which were included in S. 993, which, thanks to the effective leadership of Senator Glenn, my colleague from Ohio, and Senator Roth, passed the Senate Governmental Affairs Committee on a bipartisan basis last year; and H.R. 5128, which passed the House Governmental Operations Committee overwhelmingly last year.

We all have stories from our constituents about the way unfunded mandates force State and local governments to revamp their budgets, reorder priorities and, in many cases, reduce vital services and/or increase taxes. For example, I received a letter recently from Mark Shockman, Fire Chief of the Clearcreek Fire District located within my congressional district, stating that unfunded mandates "are having strong impacts on our ability to provide emergency and non-emergency services to our customers, and your constituents."

Put simply, I believe it is an abuse of power for the Federal Government to impose mandates on State and local governments with no understanding of the impact such mandates will have on these local jurisdictions. These local governments must have the right to set their own priorities and to work out their own budgets without fear that a new set of costly priorities might be sent down from Washington.

As you will have noted, S. 1 contains certain provisions that relate exclusively to procedures in the House of Representatives. These are included to recognize differences that exist between the two chambers in parliamentary practices and to achieve "parity" in the House with the Senate practices. Thus, the House bill includes language that attempts to preserve the point of order against unfunded mandates that might otherwise be waived by the House Rules Committee. It also retains the right of House members to move to strike any such mandate. Finally, the bill

amends House Rules to require Rules Committee disclosure in the event that points of order against unfunded mandates are ultimately waived.

In closing, I would like to again express my appreciation for the bicameral efforts to date. On both sides of the Capitol, every effort has been made to address concerns that have been raised by earlier drafts of the legislation. I believe that we have ended up with an effective and fair approach. As you will hear today, it has won the enthusiastic support of the so-called Big Seven, the national organizations representing Democratic and Republican elected local and State public officials. Most importantly, it's "good government" legislation that brings greater responsibility and accountability to the legislative process. I'm proud to have been involved in this effort. I am grateful to have been given the opportunity today to share my thoughts with you this morning, and I look forward to continuing to work with Senator Kempthorne and the distinguished Members of these Committees in enacting a common sense solution to a growing crisis in the Federal-State-local partnership.

Chairman ROTH. Thank you, Congressman Portman. I appreciate you coming over to this side and applaud you for the leadership role you have played in this most important legislation. I regret that there won't be the opportunity to ask you questions, but I know that time is of the essence, and we thank you for coming.

Mr. PORTMAN. Thank you, Mr. Chairman.

Chairman ROTH. We will now proceed.

Senator Dorgan.

OPENING STATEMENT OF SENATOR DORGAN

Senator DORGAN. Mr. Chairman, I will be brief. This mandate bill has great merit, in my judgment, and I think it moves from the philosophy that we must stop imposing mandates with little consideration to how much they cost or who pays. I credit Senator Kempthorne.

I might say also that Senator Domenici and I have written provisions that have been included by Senator Kempthorne and Senator Glenn and others in this draft. These provisions deal with the private sector. It is not just State and local governments that we ought to be worried about. Yes, we impose mandates there, and yes, we ought to be more responsible, but the men and women who open the business on Main Street are also hit with mandates.

Senator Domenici and I have worked with others to insist that there be a point of order against legislation that has not been fully analyzed for the mandates it imposes on the private sector. So that portion of this bill is a portion that we drafted and I am very pleased that that is included.

I do want to make one other comment, because this discussion about mandates needs to have some balance to it. Trouble runs on a two-way street in this issue of Government behavior, and while I support this legislation and commend Senator Kempthorne and others and intend to vote for it and advance it with the additions that I have made with respect to the private sector, I want to point out that even as State and local governments have complained about mandates, the Federal Government has this year sent about $195 billion of Federal money back to State and local governments. If you exclude Medicaid funding, which you probably should do, you still have $125 billion above Medicaid reimbursements.

The fact is, even as State and local governments have complained about mandates, some have hooked their hose up to the Federal tank to suck as much Federal funds out of that tank as is

possible at virtually every circumstance, and I will mention just one example: The Medicaid provider tax.

This is a phony tax imposed by some governments. It is designed to extract Federal dollars and it increases the Federal deficit. State governments tax local providers and then when the Federal money comes back, the States make the local providers whole again by restoring the money they paid in the first place, and the only result of that transaction was that State and local governments in that case found a way to suck money out of the Federal trough.

So my notion is this. Responsibility runs two directions. Yes, we have a responsibility to deal with this issue of mandates. But as we do, in the issue of Medicaid and phony provider taxes, and in the issue of what was an unprecedented run-up in the costs of bonding, when State and local governments were spending Federal money. I think that we must also ask for responsibility on the part of State and local governments in those areas as well.

I want this discussion to include that understanding. Responsibility runs both directions. We are dealing with one area of reform today that responds to the issue of how the Federal Government behaves. There is another level of responsibility that I hope will be exercised among State and local governments in this country as well.

Chairman ROTH. I want to point out to the panel that time is running and we still have the second witness to appear before us, so I would urge as many of you as possible to keep your remarks very brief, and if possible, to make none.

With that, Senator Gregg.

OPENING STATEMENT OF SENATOR GREGG

Senator GREGG. Thank you, Mr. Chairman. I wish to join in the comments made by many of the panel members who have been State and local officials. I believe there are three former governors who serve on these two Committees combined. As a former governor, I always viewed unfunded mandates as sort of the cow manure of American politics, leaving cow pies all over the field into which State and local officials were forced to step.

I think that a great deal of credit must go to Dirk Kempthorne, who as a former mayor came to this Congress and made it his task and his purpose to make sure that the field was cleaned out, and he has done a superb job of that with this bill.

It also reflects a fundamental shift in the way we govern. The fact that we are now going to have levels of government taking responsibility for the actions which they undertake is a new idea, at least in the concept of Federal politics. In our State, we have had a constitutional amendment requiring that the State not have unfunded mandates for about 10 years, but at the Federal level, of course, this has not been the case.

So this is long overdue and it is very appropriate and I congratulate Senator Kempthorne for his efforts.

Chairman ROTH. Thank you.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you, Mr. Chairman, and I understand the mandate from you to keep our remarks short, so let me just simply say I appreciate the opportunity to have this hearing.

I think the key word that I have heard from everyone out of this is "balance," that we need to put into this process. There is no doubt the scales have been tipped in the direction where we have passed too many unfunded mandates, but I hope we also keep in mind as we move through this that we have a mandate from our citizens to assure that they have a good quality of life that they have come to expect in this country. They also have to understand there is a cost to that. That is our responsibility as well. But we must be careful as we go through this not to tip the scale the other way as well, and those will be the questions that I will be working towards. Thank you.

Chairman ROTH. Senator Smith.

OPENING STATEMENT OF SENATOR SMITH

Senator SMITH. Thank you, Mr. Chairman. I do not have an opening statement, but I will be very brief here.

First of all, I want to say I am delighted to be on the Governmental Affairs Committee as a new Member.

Chairman ROTH. We are delighted to have you.

Senator SMITH. I also want to thank my colleague. You have heard a lot of lauds, Senator Kempthorne, and I am sure it is nice to sit there and listen to them all, but let me just add briefly, your success is probably more as your role as a former mayor, I think, because of the first-hand experience you have had in dealing with these unfunded mandates. It doesn't take anything away from your role as a Senator, but I think the fact that you have traveled all over the country and your experience as a former local official is very, very important in your success in getting this legislation before us.

This is the kind of legislation that makes it exciting to get up and come to work in the morning. I must say, with all due respect to my friends on the other side of the aisle, it has been a little more exciting since November 8 to come to work. [Laughter.]

This is what federalism is all about. Maybe it is a sad commentary that we basically have ignored the Tenth Amendment and now we are probably going to have to have another amendment to abide by the Tenth Amendment if, in fact, your legislation does become an amendment to the Constitution, which it may ultimately have to do.

I just want to make a couple of final points here. This is probably the No. 1 issue in most States. Certainly, it is in New Hampshire. In one case, a small community in the State of New Hampshire indicated to me, just come on in and take my town. Go ahead and run it, because I can't deal with this. I can't do all of these things. We don't have the funds to prioritize, to do all the things that you are asking us to do with these mandates.

But on the other hand, as Senator Dorgan so eloquently said a moment ago, it is a two-way street. There are a lot of monies being handed out to the local communities by the Federal Government

that are being used here, so I think we need to keep that in mind, that it is a two-way street.

The final point, Mr. Chairman, that I want to make here is that I haven't totally read the legislation yet but I have spoken to Senator Kempthorne about this. As he is aware and other Members of the Committee are aware, as it stands now, if a piece of legislation, using an example, a piece of environmental legislation, say the Clean Air Act, if it is not reauthorized, it continues to be funded. If we do reauthorize it, under your law, it has to be funded.

But the point is, what happens when nothing happens and it continues to be funded, as is current law? If we don't reauthorize it and it continues to be funded, how are we going to deal with these? I realize this is not retroactive legislation, but you could have a situation that could develop here which could be a way out, if you will, to get around your legislation by simply ignoring it and not reauthorizing it all and letting it continue to be funded.

I would be interested in hearing how you would recommend dealing with that if your legislation does not specifically deal with it.

Thank you, Mr. Chairman.

Chairman ROTH. Senator Lautenberg.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman. I did note your request for brevity, but I would ask your indulgence for just a couple of points that I would like to make.

First, I would like to commend Senator Kempthorne for this legislation. He has been persistent and very effective in bringing it to us. I think it is a very important discussion that we are going to have.

I would like to make just a few brief remarks about the issue of unfunded mandates. I was a cosponsor of the legislation reported by the Governmental Affairs Committee last year and I believe the Federal Government needs to be more attentive in considering the costs it passes on to State and local governments and local taxpayers when creating mandates. We have the same debate going on in the capital of our State right now.

I haven't had the opportunity to fully analyze this legislation, as it has been just introduced, and it seems as though many, if not most, of the provisions are very similar to the bill reported last year, but I will be asking questions of our panelists to clear up some issues.

I think everyone in the room would agree that Federal mandates play an important, and in many instances, necessary role in our form of government. The problem, for instance, of interstate pollution is an obvious example of a matter that can only be effectively addressed at the Federal level.

Just a few years ago, the beaches of my State were being contaminated by raw sewage that was being dumped from a neighboring State. The State was mandated by the Federal Government to build a treatment plant to correct the situation. Do the residents of that polluting State want to pay to prevent pollution in New Jersey? Of course not, and that is exactly why Federal mandates are needed.

I notice, too, that the exclusions to the requirements of S. 1 are identical to those provided in last year's Kempthorne-Glenn bill, and missing from both of those bills is an exclusion for environmental, health and safety laws. I will ask the witnesses to explain why shouldn't bills addressing the important trans-border environmental health and safety matters be excluded from a point of order?

I am worried that without this exclusion, States may embark on a race to the bottom, whereby the States that lower their environmental standards to remain competitive will cause a competition that is very unhealthy. Is this the sort of behavior that the Federal Government wants to encourage?

Mr. Chairman, I commend you for moving this legislation, for the discussion that we are going to have about this very important subject. I will end my comments with a request that my full statement be entered into the record.

Once again, I commend the author, Senator Kempthorne, but we are going to have some questions about this that I look forward to having answered.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF SENATOR LAUTENBERG

I would like to make just a few brief remarks about the issue of unfunded mandates. I was a cosponsor of the legislation reported by the Governmental Affairs Committee last year. And I firmly believe that the Federal Government needs to be more attentive in considering the costs it passes on to State and local governments, and local taxpayers, when creating mandates.

I have not had the opportunity to fully analyze this legislation, as it has just been introduced, but it seems as though many, if not most, of the provisions are very similar to the bill reported last year. However, there are some differences and I will be asking some of our distinguished panelists questions to clear up certain issues.

I think everyone in this room would agree that Federal mandates play an important, and in many instances, necessary role in our form of government. The problem of interstate pollution is an obvious example of a matter that can only be effectively addressed at the Federal level.

Just a few years ago, the beaches of my State were being contaminated by raw sewage that was being dumped from a neighboring State. That State was mandated by the Federal Government to build a treatment plant to correct this situation. Do the residents of that polluting State want to pay to prevent pollution in New Jersey? Of course not. That is exactly why Federal manadates are needed.

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I'm worried that without this exclusion, States may embark on a "race to the bottom" whereby States lower their environmental standards to remain competitive with States that have lower standards. Is this the sort of behavior that the Federal Government would want to encourage?

I would also like to ask the witnesses and my colleagues whether there has been any Federal legislation passed during the last few decades which created large unfunded mandates but which were justified. Bills such as the Family and Medical Leave Act and the Clean Water Act created large unfunded mandates. I believe they should have been passed. I believe they should be passed even if the Federal Government doesn't "reimburse" the States fully for the costs of meeting the requirements they created, although I agree we need to be much more sensitive about imposing costs on the States. I question if these bills would have been passed if S. 1 had been law.

In fact, I wonder if the proponents of this legislation would vote to waive the point of order for that kind of legislation.

I am encouraged that Senator Kempthorne retained the 51 vote majority needed to overcome the requirements created under this bill. I know a small minority are

advocating a 60 vote majority. I would oppose any effort to impose a super majority requirement and am not sure I could support this bill if such a requirement were included.

I hope that today's discussion will address some of these concerns and I thank the Chairmen for holding this hearing today.

Chairman ROTH. Senator Dodd.

OPENING STATEMENT OF SENATOR DODD

Senator DODD. Thank you, Mr. Chairman. Let me just underscore what has been said. I think it might be helpful here to consider a little history, in a sense.

I understand the mayors and the governors, of course, are feeling strongly about this issue because of what has happened to them, the pressures that are on them. But back in the early 1980's, something called New Federalism, which some may recall, of course, we went about the business of systematically cutting out Federal spending that went to State and local governments in a rather broad and heavy-handed approach, creating, in a sense, almost prophesying the events that draw us to this particular conclusion here today, where we have removed ourselves as a participant in supporting the kinds of things that Senator Lautenberg has mentioned and others have mentioned.

Last year, I offered an amendment in the Budget Committee that would have taken from 7 percent to 30 percent the Federal commitment to special education. In 1975, when we passed the special education legislation, we made a commitment at the Federal level that we would participate to the tune of 40 percent of that cost. We never got above 7 percent. Last year, I tried to get it to 30 percent and failed. We weren't able to do it.

I hope that we do strike a balance here. I think that is needed. I am very uneasy about the notion, somehow, that this is going to be an all-or-nothing game here. That is not, in my view, a wise way to be approaching it. I think a broad, very important issue for us to be looking at is the issue of governance at the State, local, and Federal level and where responsibilities lie.

I would also point out, as well, that while we are cutting our support to local and State governments under the guise of New Federalism, we watched our deficit increase dramatically, at an annual level as well as the national debt, and my colleagues here are all familiar with those numbers. But while we were removing ourselves from the obligation to support State and local governments, we were also increasing our deficit situation, thereby almost guaranteeing that we would not be able to participate in support of the kinds of things that have been mentioned already.

We are now in a situation, obviously, where State and local governments feel this tremendous pressure. But if we step back entirely from our obligations as a Nation to deal with education, environment, transportation, health, there is a long list of issues here, if we are not going to participate fully as a result of requiring some obligations here, I fear very strongly about what this means for our country.

So I am very sympathetic to the mayors and the governors who feel these burdens, but I am sure you are also going to hear from some of them about their worries and concerns that we have retreated from our participation and involvement in trying to share

in meeting the obligations and the costs of what I think, in many cases, are required and necessary obligations if this is going to be a healthy and safe, well-educated society. I look forward to the debate and discussion.

Mr. Chairman, let me underscore what Senator Levin has said. I appreciate the importance and the urgency of this issue, and I have great respect for my colleague, Senator Kempthorne, for what he is doing in this area, but let us not rush so fast here that we create a far larger problem for ourselves than the problem we are trying to solve. We have time here to do this right. Let us do it right. Thank you, Mr. Chairman.

Chairman ROTH. Senator Brown.

OPENING STATEMENT OF SENATOR BROWN

Senator BROWN. Thank you, Mr. Chairman.

I think good decisions are a product not only of analyzing what the benefits are in a particular proposal, but good decisions also reflect a balance of what the cost is. What we have developed in this Nation is a system where we have the Federal Government dictate the answer without consideration of the cost, because what they have done is imposed it on someone else. That is, we decide what is to be done and somebody else pays the bill. Any of you who have children in college understand the practical impact of this process.

What you spend is much different sometimes if you have to pay for it than if you don't have to pay for it, and that is what we are talking about. We are talking about you sending your kids to college with you paying the bills and them deciding what is spent. Some of you are from families that are wealthy enough to do that and not have to worry about it, but most Americans aren't, and most Americans understand what the problem is.

I will tell you, Colorado understands. There are 195 federally-mandated programs that the Colorado legislature has to come up with the money for. Are they good programs? Some of them are. Some of them would be spent the same way. But a lot of them aren't, and let me be specific, because this amounts to 23.2 percent of the entire general fund of Colorado spent on things that are dictated to it by Washington.

Some are good, but let me give you some examples. How would you feel if your State of Rhode Island or New Hampshire or other States had your only trash disposal site shut down for the whole State? Let me tell you, in Colorado, we have some counties that are bigger than a number of the States on the East Coast. Las Animas County, for one, had its only, the last landfill closed in the whole county, and the county is bigger than some of the States on the East Coast. They now must haul, for Trinidad, they have to haul their trash over 100 miles.

Did that make sense? Should they have looked at the cost when they made that decision? I think they ought to have at least some flexibility in that, and I think the people who dictated that answer at least ought to know the facts before they dictated the answer.

The town of Hazwell has a population of 69 people in Colorado. Their entire annual budget is $30,000, and that is a heavy burden. Six-thousand dollars of it goes for tests for safe drinking water, and let me emphasize, these are tests. These are not to improve the

quality of drinking water, these are tests, and these are tests for problems which they have never experienced.

Do you spend a fifth of your entire budget doing tests on things that have never been raised as a problem? Perhaps some of you would be comfortable in saying, absolutely, you should, but there are others of us who think that probably you ought to test for things that seem to be likely problems and not waste your money on things that don't appear to be likely problems.

I don't want to dwell on it, but the county of Rio Grande, which is a small county, not in terms of geographical area but in terms of population, spends $1.7 million of its budget complying with the trash regulation. The fact is, this has gone nuts. It has gone haywire. We have had lousy decisions that have been maybe ideologically pure but haven't had a lick of common sense. We ought to either let the people who are paying the bills make the decisions or we ought to be able to be strong enough to pay for our decisions ourselves, and that is what this is all about.

I must say, there is one concern I have as I look over the draft that I am a cosponsor of and that is with regard to it not being allowed to be considered under judicial review and not be allowed to affect intent. My sense is that we ought to be willing to grandfather the existing programs and apply this but apply it full-bore to new programs, and so I will offer an amendment to make clear that those restrictions on judicial review apply to things that are now in law. But it does seem to me this philosophy of the people who call the shots pay the bills ought to apply to anything that comes out in the future, and I will offer that amendment to apply this judicial intent and review to future legislation at the appropriate time. Thank you, Mr. Chairman.

Senator GLENN. Mr. Chairman.

Chairman ROTH. Senator Glenn.

Senator GLENN. If I might just have 30 seconds, we have had four different Members now express concern about not having time enough to—Senators McCain, Levin, Lautenberg, and Dorgan—to put in, get amendments ready, and they would presume they would have to do this on the floor if they want to make any changes.

I would ask on their behalf, and all of us, that we give consideration to postponing the mark-up tomorrow over into next week. The Budget Committee will not have their mark-up done then anyway, so it wouldn't delay S. 1 from getting to the floor, as I see it. We have discussed this issue privately here, but I wanted to bring that to your attention now and hopefully we could put the mark-up over until next week.

Chairman ROTH. Well, unfortunately it would delay the consideration of the legislation on the Senate floor, but rather than get into a discussion at this time, I would like to proceed with the hearing, because the hour is growing late and we still have to hear from the proud father of this legislation.

Senator GLENN. But you had indicated you would talk to Senator Dole about whether we could put the markup over into next week.

Chairman ROTH. I indicated we will discuss it further, yes.

Senator GLENN. All right.

Senator GRAMM. Mr. Chairman.

Chairman ROTH. Senator Gramm.

OPENING STATEMENT OF SENATOR GRAMM

Senator GRAMM. Mr. Chairman, I appreciate your recognizing me. We are holding hearings over in the Banking Committee on derivatives and Orange County, and I was delinquent in getting here. The Federal Government is getting ready to tell people how to manage money, which always frightens me.

Let me just make a very brief opening statement, if I may. I would like to congratulate Senator Kempthorne. I think his leadership on this bill and our impending success—at least I hope impending success—is evidence that a new member with a good idea and a willingness to work can have a tremendous impact.

I agree with Senator Brown. I think we clearly have a problem. The whole idea behind unfunded mandates is basically two false premises: First, that it makes good sense to have one group of people spending money and another group of people paying for it. I have always found that when people are not paying for their expenditures, they are not as judicious as they are when they are paying for it.

And we now have literally reached the situation that in many cities in my State, half their budget is driven by what the Federal Government has told them to do. That cannot make any sense.

Second, unfunded mandates are based on a premise that somehow we in Washington either love the people of our cities more than the mayor and the city council of those cities love them, or that we have a wisdom that they lack. I think both those are false premises.

I think it is very important that we change the legislative process and that we build into that process a supermajority system that you have to breach in order to have unfunded mandates. I think it is very important that this bill be strengthened to require a 60-vote point of order in the Senate against any unfunded mandate.

I think if we aren't going to pay for it, we ought not to be telling city government, county government, or State government how to do it. I think if we don't put up the money, that the mandate ought not to go into effect. And I think that this process whereby Congress tells cities how to run their business with their money ought to come to an end.

I think as we look at the balanced budget amendment to the Constitution, that a lot of people are worried that if we are forced to balance our budget, that we are going to continue legislating at somebody else's expense. I think that's a legitimate concern, and I think the Kempthorne bill is a major down payment in dealing with that concern.

I want to work with Senator Kempthorne. I think this bill can be strengthened. I do believe we need a 60-vote point of order against unfunded mandates, if we really want to make it difficult to stop them.

I also believe it would be helpful to have some kind of base closing commission process, whereby we might empower a commission to go back and look at existing mandates and make a recommendation to us as to what to do about them, and have a simple up-or-down vote, as we do on base closings, to try to deal with the problem.

So we're making an important step, it seems to me, Mr. Chairman, in trying to stop the process. We have gone a long way, and I think we need to go back and try to fix it. And I want to congratulate our dear colleague from Idaho for his leadership.

Chairman ROTH. Senator Kempthorne.

TESTIMONY OF HON. DIRK KEMPTHORNE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator KEMPTHORNE. Mr. Chairman, thank you very much, and may I say to all Members of the Joint Committees, I appreciate so much the comments that you have made this morning.

I want to thank Chairman Roth and Chairman Domenici for the fact that we have this joint hearing—and this is extremely helpful in this entire process—and also to acknowledge both our Chairmen and our two Ranking Members, Senator Glenn and Senator Exon. I will say that you four gentlemen were absolutely instrumental in helping us craft this during this recess that took place through the holidays, so that we have something that is meaningful and can go into effect and do as we intend.

Congressman Portman, I appreciated his comments, and would tell you that he has been a tremendous partner in the House on this, as well as Chairman Clinger and Congressman Gary Condit, so the partnership is working well in the other body.

And, too, just an acknowledgment, Senator Gregg has been one of the heroes on this issue, and was the first Senator last session to cosponsor S. 993; took a leadership role there. And Senator Byron Dorgan, who truly has helped to lead this effort, in identifying and acknowledging the private sector, and so the safeguards that we have built into this legislation concerning the private sector.

And the fact that when this was introduced yesterday, we have 56 cosponsors, so a majority of United States Senators have already said that they want to proceed with this piece of legislation.

I would like to address some of the things that I have heard this morning. I know that there are some individuals, some interest groups, that are concerned that if we were to enact this legislation, that suddenly we are going to turn our backs on some national needs; the idea that if there is in fact a national need on public safety, on public health, that well, unless we can have someone else pay for it, then we're not going to deal with that.

I think that is a criticism of congressional resolve, the idea that if we can't use someone else's money, then, why, we would never use our own. And I think that is a false statement, and I think we should help remove that sort of an opinion that is expressed by some groups.

The idea that—and I question—aren't these Federal mandates necessary? Well, if they are, then, Mr. Chairman, I think we ought to identify if there is a true national need. Then, second, we need to develop the means to correct it or to deal with that national need or priority. And, third, we need to provide the funds to carry it out.

Why would we balk at that third element, of not providing the funds to carry out a program that is in the best interests of this Nation? Why should national programs be paid for by local prop-

erty taxes, one of the few sources of revenue that they have available to them at the local level?

Today we have all seen that the term "unfunded mandates" has grown dramatically in public awareness. But for a number of years I will tell you that teachers knew what unfunded Federal mandates were, because they knew that any time we had a new Federal program, new mandates, that it could mean the difference at the local level between whether or not they could bring about the purchase of new textbooks for the kids; whether or not they could reduce the student ratio, the student/teacher ratio in the classroom.

Local officials knew. They knew that if there is another new Federal program coming that will not be paid for at the Federal level, it can be the difference whether or not you add new police officers or fire fighters, or whether you finally can open that library on Mondays. Governors knew.

So who didn't know? Well, apparently Congress didn't know, because Congress never acknowledged the unfunded portion of that phrase "unfunded Federal mandates." So while teachers and mayors and county commissioners and governors all knew firsthand the financial impact of these Federal mandates, Congress did not, but now they will.

I believe, Mr. Chairman, that if our citizens could just have a conversation with us, they would say that, "Folks, if mandates come from the Federal Government, and if you truly believe that they are necessary, then take it out of our Federal taxes, because that just seems straightforward. Don't pass it off on somebody else, because ultimately we the citizens foot the bill anyway. So if it's a Federal mandate, let's pay for it with the Federal revenue."

One of the responsibilities of Members of Congress after they have been elected, in essence, they are in charge of the Federal Treasury, but I don't think that it necessarily follows that Members of Congress are also in charge of State treasuries and local treasuries, but in essence that is what has been happening.

And, Senator Exon, you made part of the record a statement by your Governor of Nebraska, Ben Nelson, who is a tremendous governor, and he made a comment recently where he said, "I was elected governor, not administrator of Federal programs for Nebraska."

Senator Levin, I believe that if you were still president of the city council for Detroit, you would be in all likelihood a member of the next panel advocating this legislation, because you would come here and say that we are impeding your ability to do what you were elected to carry out at the local or the State level.

Mr. Chairman, the particulars of S. 1—and again, it is based on S. 993, which for 2 years we discussed thoroughly, was passed unanimously by this Committee, was passed in the House in similar legislation.

S. 1 creates a point of order that requires that any legislation proposing a mandate greater than $50 million on State or local government must have a Congressional Budget Office estimate of the total cost of the mandate.

Further, S. 1 requires that the legislation must include the funding to pay for the costs of the mandate through direct funding, new taxes, or appropriations.

If the mandate is to be paid for by an appropriations bill, then either the money to pay all direct costs of compliance with the mandate must be appropriated or, if it is not fully funded, then one of two things must happen: Either the mandate does not take effect or the mandate must be scaled back to a level commensurate with the reduced level of appropriations. If those elements are not in the bill, then the proposed mandate-making legislation is ruled out of order.

S. 1 also requires that our partners in State and local governments be consulted by the Congressional Budget Office in determining the mandate cost. That should ensure more accurate cost estimates, and reestablishes the federalism envisioned by our Founding Fathers.

Additionally, legislation imposing mandates greater than $200 million on the private sector must have a CBO mandate cost estimate or be ruled out of order.

S. 1 is enthusiastically endorsed by the U.S. Conference of Mayors, the National Association of Counties, the National League of Cities, the National Governors Association, the Council of State Governments, the National Conference of State Legislatures, the National School Board Association, the U.S. Chamber of Commerce, the National Federation of Independence, and the National Retail Federation.

I want to emphasize that this legislation is not intended to stop compliance with mandates or regulations already in place. The goal is to stop the imposition of future unfunded mandates.

If something is truly a national priority, if it is in the best interest of this country, along the lines of public health or safety, then Congress should be honest and up front about it and pay for it.

Mr. Chairman, I would stop at that point and respond to questions if it would be in order. There were two points that were raised. The Senators that raised them are not here, so I would get back to them with the points that they raised.

Chairman ROTH. Well, thank you, Senator Kempthorne. We will limit questions to 5 minutes. Those of you that can be briefer, that will be helpful, because of the lateness of the hour, and we do have a number of additional witnesses.

Chairman DOMENICI. Mr. Chairman, might I ask procedurally a question?

Chairman ROTH. Yes.

Chairman DOMENICI. I understand we have a vote at 11:30 on the floor. Is that your understanding, also?

Chairman ROTH. That is correct.

Chairman DOMENICI. I would suggest and ask if you will concur that we go on and meet right through the vote. For instance, I will go immediately and vote, and then you can go during the 15 minutes, and we will just stay in session during the vote. Is that——

Chairman ROTH. That is satisfactory. I think that is the most expeditious way to proceed.

Chairman DOMENICI. My second question has to do with what your intention is for the rest of the morning and early afternoon. Are you going to go right through lunch, or are you going to stop at 12:30, or what is your——

Chairman ROTH. It is my intent to go right through until we complete the hearing.

Chairman DOMENICI. And so those who are overweight can lose a little weight today?

Chairman ROTH. That is the intent.

Chairman DOMENICI. Very good. Thank you, Mr. Chairman.

Chairman ROTH. Senator Kempthorne, the underlying aim of your legislation is of course to make Members more informed about the cost, the impact of unfunded mandates, and of course to make it politically more difficult for Congress to impose such mandates.

Do you believe that having to vote specifically to waive the requirement that a mandate be funded will cause Members of Congress to have second thoughts about taking such an action? Will the State and local officials be able to make their congressional representatives feel the heat before casting such a vote?

Senator KEMPTHORNE. Well, Mr. Chairman, I appreciate the question. Mr. Chairman, you and I both know that so many times when we vote on legislation, currently when we are down in the well and there is 15 minutes to vote, you will hear one another ask, "Is there a mandate in this?" I mean, that is the extent of our knowledge right now.

And so the fact that through this process, that if in fact a point of order is made against legislation because it is not going to provide the funds for that mandate, if you cannot convince a majority—and at this point it is a majority of Senators—that we should waive the point of order, then I question whether or not it should be waived.

But that is the process of the Senate. Majority rules. You should be able to present that.

Would local and State officials be able to bring about pressure on their local representative? Well, it would be appropriate. It would be appropriate for those State and local officials to let us know, before we cast our votes, their thoughts on this.

But it would be, for the first time, a recorded vote, and I don't think it would be automatic what the outcome would be, because I think that you would see in different scenarios a rationale that there may be times that you should waive that point of order.

My intent, though, and my hope is that we will no longer have unfunded Federal mandates.

Chairman ROTH. Some people have expressed a concern that Congress, being required to fund intergovernmental mandates, might begin to try to accomplish the mandates by imposing them directly on business. Do you think that this is a serious risk, that Congress might suddenly become very creative in finding ways that are not being done now to impose unfunded mandates on the private sector?

Senator KEMPTHORNE. Mr. Chairman, we have built-in safeguards in this legislation so that the private sector realizes that they have recourse also. And that is why, I believe, that you have the endorsement of the U.S. Chamber of Commerce and NFIB, for example.

If I may for just a moment mention some of those safeguards that are here, that I think would preclude that from happening, one is that any bill that contains direct costs to State and local gov-

ernments which exceed the $50 million threshold for a mandate is out of order unless it contains both—and I underline both—the CBO public sector and the private sector analysis, in the Committee report.

A second point: In S. 1, for regulatory rulemakings, we require each Federal agency to assess the effects of Federal regulations on the private sector. And for regulations that contain an intergovernmental mandate that exceeds $100 million, the agency must analyze the cost of compliance with the intergovernmental mandate and any costs of compliance which will flow to the private sector.

A third point: The agency must analyze the effect of Federal private sector mandates on the national economy, productivity, economic growth, full employment, creation of productive jobs, and international competitiveness.

And the final point there, Mr. Chairman, is that we require the authorizing Committee in its report to analyze the potential for different treatment between the public and private sector. This will require informed decisionmaking by Congress.

If an unfair effect would result, the Congress may decide to either rethink the mandate or to rethink the funding decision, but we will know that decision up front, instead of trying a back door to simply put these mandates on our business sector.

Chairman ROTH. I have one more question I would like to ask you. It is my understanding that the Director of CBO has testified that preparing thorough and reliable State and local cost estimates is extremely difficult. I think they made a review of something like 16 different bills involved in 1991 and found that in 6 of the 16 cases they could not come up with specific estimates.

If this proves to be the case, will this undercut seriously the effectiveness of the legislation? What if the CBO comes up with a range? Instead of saying it will cost $100 billion, it will cost in the range of $100, say, to $150 billion. What would happen in that circumstance?

Senator KEMPTHORNE. I have discussed this with Senator Levin, also, who sent a letter to the Director of the Congressional Budget Office. I have seen that correspondence, and you are correct in the 16 items that they reference.

Without being selective, I simply took them in the order that the Congressional Budget Office pointed to these, and if I may just give you a statement as to why they didn't feel that they could come up with the analysis.

In the first case, the requirements of S. 993 at the time do not apply to bills that establish or enforce statutory rights, that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status, which is also in response to what Senator McCain had asked.

In H.R. 429, such an estimate would not be necessary under this bill because these costs would result from voluntary agreements.

H.R. 1096—it is possible that with more time and resources, CBO would gain enough information from the specific counties affected to permit a reasonable estimate.

And I think you get the flavor of this. Wherever they have said that they truly would have to come up with an estimate, they indi-

cated that if they had the appropriate time and resources, they could do so.

In this bill we provide the funds, $4.5 million annually, to CBO to carry out this responsibility. And I made sure of that in communicating this to Senator Mack and Senator Domenici, in their efforts on the scaling-back of staff levels, so that they know up front this is a responsibility that has to be carried out by the Congressional Budget Office.

Final point, Mr. Chairman: S. 1 does not cause us to abdicate our decisionmaking ability. It allows us, Mr. Chairman, to enhance our decisionmaking ability.

If they do give us a range, I would again ask CBO to narrow that so that we don't deal with a range. I believe they will be able to deal with the expertise and gather this, in time, but I would take the higher level so that we can ensure we have provided the funds to our local partners and State partners.

Chairman ROTH. Senator Domenici.

Chairman DOMENICI. Mr. Chairman, thank you.

Dirk, thank you so much for all your effort, and what I said about this being your bill is right, and I hope eventually we can name it after you.

Senator KEMPTHORNE. Well, thank you very much.

Chairman DOMENICI. Let me see if I can put in perspective what I might call this bill. It seems to me that we are leaving out a word, "accountability." Accountability, that is what this bill is about. It is going to make the Congress of the United States more accountable for its actions with reference to sending responsibilities to cities and States and not paying for it.

Now, in that regard, it would seem to me that what you require—could I ask, is that not correct? Is that not the real purpose, so we don't act without knowledge, so the public is not hoodwinked, so they know who to blame? Isn't that what, blame us?

Senator KEMPTHORNE. That is correct, Mr. Chairman.

Chairman DOMENICI. You see, heretofore, if you go to those people in Colorado, where our good friend Hank Brown, Senator Brown, was talking about the two communities and the two issues, everybody says we don't know who to blame.

When you talk to the Senator or the Representative, unless they voted against every environmental law, they will say, "We didn't have that in mind. I mean, we passed the law, but we surely didn't know that they were going to make this community of 300 people carry their waste 200 miles to dispose of it," their regular garbage waste.

What we are going to be doing now, as I understand it, is that if the CBO, the mandate on them to inventory and assess the costs turns out to be accurate and timely and they can do it, then we are going to know what we have never known before, and that is what is it going to cost and who is going to pay for it. Right?

Senator KEMPTHORNE. That is correct.

Chairman DOMENICI. Now that will become public information in a very real sense. If it is not available, the bill doesn't get passed.

On the other hand, you are suggesting, and I gather you support this, that after all of this information regarding who is accountable for what is before us, that if the Appropriations Committee does

not want to pay for it, one of three things happens, as I understand it. First, if they pay for part of it but not all of it, there is a process for evolving out partial compliance rather than total. Is that not correct?

Senator KEMPTHORNE. That is correct.

Chairman DOMENICI. Second, there is a process that says if they don't pay for it, it is null and void "unless"—and the "unless" says that the House and Senate, in an up-or-down vote, uncluttered by anything else, will have to waive the point of order against that bill. Is that correct?

Senator KEMPTHORNE. That is correct. A point of order would lie against the bill if it didn't provide those remedies that you mention, but you could then seek a waiver of that point of order by making your case on the floor of the Senate or the House.

Chairman DOMENICI. Now therein brings the issue of what should the vote be when you decide to waiver, and I understand you have worked a long time and compromised and fashioned this bill, so that you have concluded that a simple majority on that waiver is adequate to provide the accountability and the responsibility if the waiver is in fact deemed appropriate. Is that correct?

Senator KEMPTHORNE. That is correct, Mr. Chairman.

Chairman DOMENICI. And do I take it that when we go to markup, we can say that the sponsor of the bill supports this simple majority approach because he has worked it out with many, many parties to this and thinks it is the best? Is that a fair assessment of your position?

Senator KEMPTHORNE. Yes, sir. That would be very accurate.

Chairman DOMENICI. Now it seems to me, then, that some of the examples given about "If we didn't do something, nobody would," maybe one of the examples about interstate pollution, do I gather correctly that if that piece of legislation—and I hardly believe that one so narrow as that comes along.

But let's assume it did, and we were trying to impose some interstate responsibility as described by one of the Senators on our Committee. Then essentially the same process would be followed, and if it reached the level of costs that required estimating and the conditionality of the process, then at some point if somebody said, "That is so important that we have got to do it," then we would have a waiver vote. Is that correct?

If they didn't pay for it, the appropriator said, "No, let's just do it. That is a responsibility between the States and they ought to be effective enough to do it. We are not going to pay for it," the Senate could say, "You are wrong, pay for it," or the Senate could say, "You are right, don't pay for it."

Senator KEMPTHORNE. Based on the rules of the Senate, that is correct.

Chairman DOMENICI. No filibuster, no long delays, a single up-or-down vote, is that correct? That is the way it is processed, isn't it?

Senator KEMPTHORNE. Yes, sir. Again, Mr. Chairman, on that point of the filibuster, I can't respond to that. I am not versed in that aspect of it.

Chairman DOMENICI. Well, let me just say I can't imagine that the staff that I put on this, to put that piece together, would have

left it out, but we will have to find out because you have got to get a vote.

Senator KEMPTHORNE. Correct.

Chairman DOMENICI. It seems to me you want a vote, don't you?

Senator KEMPTHORNE. Absolutely.

Chairman DOMENICI. Now my last question—I was a mayor like you, not a governor. Do you think that it is understood by the community supporting this no mandates unless you pay for it, understand that there is a lot of money we send to the cities and States that has nothing to do with mandates?

Senator KEMPTHORNE. Yes, I do.

Chairman DOMENICI. And you think they might have an inkling that we might say some of that money is not going to the cities and States, we are going to pay for mandates? Do you think that anybody is thinking about that?

Senator KEMPTHORNE. Yes, sir. In fact, I have heard some of them already discussing that aspect.

Chairman DOMENICI. And they are full aware that might happen, and they still want this legislation because this is very, very important to their responsibility of governance, is that right?

Senator KEMPTHORNE. I think it is safe to say that that is a strong yes, and the next panel I think will affirm that.

Chairman DOMENICI. All right. I thank you very much.

Senator KEMPTHORNE. Mr. Chairman, might I just add that your particular line of questioning I found refreshing, and it was easy.

Chairman ROTH. Thank you very much. Senator Glenn.

Senator COHEN. Did he give you the questions in advance?

Senator KEMPTHORNE. No, sir.

Senator GLENN. Let me mention, I think Chairman Roth put his finger on a very key element of this, of the whole bill. And as we have known since we started working on the legislation, that one of the critical points was going to be the CBO process of estimating what these costs are, and that they are only estimates.

They are going to be horseback estimates at best, at least some of them. CBO will not be able to estimate down to the exact dollars and cents, and they are going to be very important—so I think that is a key element that we are going to have to watch after this legislation is passed, and make sure that the estimates are very good ones.

Chairman Domenici also confirmed in his comments that the big difference this will make is that we will be making those decisions, if there is a decision to waive S. 1's funding requirements and say, "The State and local governments have got to do it, period, that is it," it is going to be done on an informed basis.

Senator KEMPTHORNE. Right.

Senator GLENN. And that is considerably different than running down in the well and saying "How are you voting on this?" and voting on something without fully understanding its impact on State and local governments. We will be voting on a more informed basis than we have before.

One topic has not been brought up this morning, Dirk, and I wanted to bring it up. I would just mention it and then ask your thoughts on it also.

We have a number of exemptions here, and those have been pointed out this morning. If there is general agreement with the States on certain programs, that you are not going to fund them, then those voluntary programs do not require all of the procedures of S. 1 that we are talking about here this morning. They are voluntary, that is it, we can go ahead with them, so that is an exemption.

Senator KEMPTHORNE. Right.

Senator GLENN. Another one is on civil and constitutional rights. We have a different impact on certain States that have a history, just from the heritage of those States, of a mixed record on civil rights, and this was brought up very early in our discussions, a year and a half or so ago, on this, about what happens on civil rights. If we don't fund it, then does civil rights enforcement not have to take place at a State and local level?

Civil rights and constitutional rights are exempted from any consideration of this. Those are things that apply to every single American, and that is that.

Senator KEMPTHORNE. That is correct.

Senator GLENN. Another one is national security considerations, where there might be some emergency of some kind where a national security consideration would have to take precedency, and where some requirement on State and local governments would not be funded: Land appropriation, or whatever.

Then there is the general category of what would be termed emergencies that would be exempted from S. 1 also, as well as accounting and audit procedures, but I wanted to point out that those are exemptions that take care of some of the problems that people brought up early in this process; were very, very concerned that on civil rights and constitutional rights, that we were going to abridge those somehow, and that was not intended.

I would invite your comment on these issues. That was my only question.

Senator KEMPTHORNE. All right. Well, Mr. Chairman and Senator Glenn, I appreciate that. You are absolutely correct on the exemptions that you listed, and good long thought went into that, in coming up with that particular list.

And I think it does give the assurances that Senator McCain asked that we give to members in the community who may have disabilities and the program that is already in place, and also to remind everybody that this legislation is not retroactive. It is from the point of adoption forward.

Also, with regard to the Congressional Budget Office, because that is very important, I would make this known: That we have continually consulted with the Congressional Budget Office, through our Budget Committee staff, on each and every change which has been made to S. 1 from what was S. 993. So they have been informed, and they have been able to identify for us the dollar amount that they feel would be necessary for the resources to carry out these new responsibilities.

Additionally, when we think about how Congress utilizes the excellent services of the Congressional Budget Office, because many of their estimates are what we use in casting our votes, many times they are having to come up with their estimates based on

macroeconomic changes, on changes in interest rates, changes in demographics, and yet they have an excellent track record.

And since 1981 they have been studying impacts to State and local governments, so there is a database that is in existence today, but of course with this legislation it will become much more advanced.

Senator GLENN. Good. I have no further questions.

Chairman ROTH. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Senator let's get something unalterably clear. You just touched on it in answering Senator Glenn's question. S. 1 has nothing whatsoever to do with any mandates now in place. S. 1 simply directs that before any additional mandates of 1 cent to $1 billion would be acceptable, we would have to go through the steps that you have outlined to get the cost and have it understood and provide the money for any additional mandates, and it does not address the mandates already in place. That is correct?

Senator KEMPTHORNE. That is correct. Those mandates on the books today and their standards, as long as they do not change, they would not be affected by this.

Senator EXON. Now I understand it, and just for the record, since you have done a lot of research on this, I believe that at least a conservative estimate on just how fast these mandates have grown shows that it was about $228 million in total in 1986. It mushroomed to, I believe, $2.8 billion or something of that range by 1991. Are those approximately accurate figures?

Senator KEMPTHORNE. I believe they are, sir.

Senator EXON. It seems to me, then, that for practical purposes, and with the problems that we have now established with the CBO having great difficulty in estimating what these costs will be, that the most meritorious of all effects of S. 1 will be that we will probably stop and not be able to pass any additional mandates, or very few indeed. That is the likely effect of S. 1, is that not correct?

Senator KEMPTHORNE. I am sorry, Senator. Would you restate——

Senator EXON. We have established the fact, from the letter that Senator Levin received and copied for several Members of both of the Committees, the fact that it is very difficult for the CBO to make accurate reflections of the cost, for a whole variety of reasons.

Therefore, I suggest because the mayors and the governors and the city councils and the State legislatures have brought to our attention the fact that this mushrooming, from what I have referred to, the figure of $228 million in 1986 up to $2.8 billion by the year 1991, and has undoubtedly gone up considerably in billions of dollars since then, I think the most practical effect of S. 1 that I am relying primarily on, is that when we pass S. 1, which we will, in practical effect that is going to make it extremely difficult to pass on any additional burdens of mandates to local governments.

Senator KEMPTHORNE. Yes, sir. That is a good statement.

Senator EXON. And I think that is the beauty of S. 1.

Now let me ask you about some of the suggestions that have been made by some of the Senators in their opening statements this morning with regard to amending S. 1 to go into the matter

of the evils that exist at the present time with regard to mandates. I guess I have some concerns about that.

While I recognize that things have been done that are very unfair, I also say that I would hope—and what is your intention as the main sponsor of this? Will you be opposing any substantial amendments or changes in S. 1 as introduced by yourself and a group of us as cosponsors? Or are you looking forward to probably supporting some amendments that have been suggested here this morning in these discussions? Do you believe it is best to pass S. 1 as it is now, and address the present evils in some other form of legislation?

Senator KEMPTHORNE. Mr. Chairman, yes, I would, with all due respect. I think that S. 1 is a combination of many, many Senators, many of our partners in the State and local governments, working together, and the private sector, and it is a major step forward.

Points that have been raised, I am sensitive to those, but I really believe we can demonstrate many times that they are covered adequately in S. 1. And so it would be my hope, and I think the hope of many of the cosponsors, that this bill in its form is what would pass.

Senator EXON. Well, that is my point, and I think that is a very wise point. I simply say that if we get bogged down in trying to strengthen S. 1 to correct some of the evils that have to be addressed, I suggest that they should not be addressed in S. 1.

If we get bogged down with a whole bunch of amendments on S. 1, it may delay it, and I believe that the first action of the Congress should be to strike and say at least as of now we are not going to go further ahead. We recognize the ill-advised problems in the past that we will try to address, but I think it would be best not to clutter up S. 1 with any complications that might delay it.

Senator KEMPTHORNE. Well, I appreciate very much your statement on that fact, and the leadership that I know you will provide, helping us to accomplish that.

Senator EXON. Thank you, Senator Kempthorne.

Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Senator Exon. Senator Cohen.

Senator COHEN. Just one question, Mr. Chairman, on process. As we all know, the rules of the Senate are quite different from those in the House. House rules require that amendments be published in advance in the Congressional Record. No such requirement exists for the Senate.

As a practical matter, what happens when a Senator gets up on the floor and introduces an amendment? Who makes the determination as to whether the impact of that amendment could be classified as a mandate?

Senator KEMPTHORNE. Senator, in that case, again, I believe that we would seek from CBO their view as to whether or not that has an impact.

Senator COHEN. Let's say an amendment is introduced this afternoon. We have to then place a call to CBO saying, is this a mandate?

Senator KEMPTHORNE. Senator, again, to the extent that we could, I mean, it would be helpful. But, also, knowing the rules of the Senate, I mean, that amendment may be offered. And if you

can convince a majority that it has no impact, that would be the case.

Senator COHEN. Now, under the bill that we passed last year, the Senate Parliamentarian was given the authority to make the determination as to whether or not it was in violation of the act itself. Under this particular draft, it is the Budget Committee, as I understand it.

Senator KEMPTHORNE. Mr. Chairman and Senator Cohen, really I need to defer on that, because I think that is something that is in discussion between the two Committees.

Senator COHEN. So that has not been resolved yet?

Senator KEMPTHORNE. Well, again, I have to defer, because I am not——

Senator COHEN. I am just raising the practical question of what happens when an amendment is offered? Who makes the determination? Does it go back to the Parliamentarian, perhaps, or does it go to CBO, and then back to the Budget Committee? The Budget Committee then has to make an analysis. I assume the Budget Committee has to take a vote. I assume it is by a majority vote. It goes to the floor and then is open to challenge, I would assume, by Members of the Senate. So I believe we need to think through how this is going to be practically applied.

Senator KEMPTHORNE. Right, and I appreciate that.

Senator COHEN. OK. But that has not been resolved, as far as you know?

Chairman ROTH. No. That is still under discussion.

Senator COHEN. I am glad I could ask you one question you could not answer.

Senator KEMPTHORNE. Thank you. [Laughter.]

Senator COHEN. That is all I have, Mr. Chairman.

Chairman ROTH. Thank you, Senator Cohen. Senator Levin.

Senator LEVIN. When will this be proposed to be resolved? I mean, is this going to be—it is an important issue. Most of the amendments that come to the floor come without much notice, unhappily, around here. How are we going to function in that situation? Is the Parliamentarian going to determine if there is a mandate? And if so, whether the mandate is above the $50 million threshold, or what?

Chairman ROTH. The dollar amount would go to the Chairman of the Budget Committee with the advice of the Parliamentarian.

Senator LEVIN. On every amendment, the Chairman of the Budget Committee will personally rule as to whether or not there is a mandate?

Chairman ROTH. Only where there is a controversy.

Senator LEVIN. Well, how does the controversy get raised, and how is it resolved?

Chairman ROTH. The Budget Committee would take the CBO estimate. That would be——

Senator LEVIN. The question, though, is whether or not this is even a mandate to begin with. How do you have time when an amendment is offered to get a CBO estimate?

Chairman ROTH. The intent——

Senator LEVIN. Is the bill held up until the CBO makes an estimate as to the cost of a mandate, which can take months? Assuming it is a mandate.

Chairman ROTH. The question of whether or not it is a mandate would be taken up with the Chairman of Governmental Affairs.

Senator LEVIN. And that is a unilateral decision by one person as to whether it is a mandate?

Chairman ROTH. That is correct.

Senator LEVIN. Well, I think that is an awful lot of power in the hands of one person. I do not know of anything quite like that in Senate procedure, and I think that is going to require some attention. But let me——

Chairman ROTH. That is still under discussion, Senator.

Senator LEVIN. It is one of the reason why it is worth taking a few days here, it seems to me, after we have the language, to take a look at some of the details. I say that as someone who hopes to vote for this bill, by the way, and not someone who opposes the direction in which it is leading. But I do have some practical problems that I would like to address.

First of all, if this bill had been law at the time that the Americans with Disabilities Act had been considered, would it have applied to that act?

Senator KEMPTHORNE. No, it would not have because of the exemption we provide.

Senator LEVIN. So that even if this had been law at the time, it would not have applied.

Senator KEMPTHORNE. That is correct.

Senator LEVIN. Because many of the complaints that we are getting from local government relate to the Americans with Disabilities Act, and this is not a cure, even if it had been in place at the time, because of its exemption.

Second, let's assume we adopt or are considering an increase in the minimum wage. Now, will this law then say that unless we pay that increase for State and local government, assuming it is over the threshold, that a point of order would lie?

Senator KEMPTHORNE. Senator, let me, if I may, get back to the Committee on that particular question.

Senator LEVIN. What about the family and medical leave bill? It applies to all employers.

Senator KEMPTHORNE. Right.

Senator LEVIN. Is it intended that that kind of legislation not apply to local government like every other private employer, that they would not, assuming it is over the $50 million threshold, have to provide that leave in the absence of our providing the funding for it?

Senator KEMPTHORNE. That would be my understanding.

Senator LEVIN. And what is the rationale for telling the private employer right next door to the city hall that he has got to pay for the cost of family and medical leave but that the government, that we in a bill that is on the floor right now, says should be living by the same rules as the private sector—that is the bill on the floor.

Senator KEMPTHORNE. Right.

Senator LEVIN. That the government is not, the city government or State government would not be bound to provide that family and medical leave the way a private employer would?

Senator KEMPTHORNE. Senator, we would go through, again, this particular analysis dealing with the impact on the private sector. If it is an unfair impact on the private sector—and I will not get into the fact that I do not think we should have had that particular bill itself.

Senator LEVIN. No, but I am saying assuming we do decide that it is fair to apply family and medical leave to the private sector, it is the intention of this bill that it not apply to State and local government unless there is that waiver of the point of order?

Senator KEMPTHORNE. That is correct. It would cycle back to the waiver.

Senator LEVIN. And on the waiver itself, would you consider that if that issue came up on the floor and we had the family and medical leave bill and there is a point of order that lies against it because there is no assurance of funding for the government cost, would you consider that if the point of order were made—you do not know that it will be made.

Senator KEMPTHORNE. Right.

Senator LEVIN. If it is not made, the mandate applies to local government; correct?

Senator KEMPTHORNE. That is correct.

Senator LEVIN. But assuming someone makes the point of order, that if a majority of us then decide that it should apply to State and local government on an up-down vote, would you consider that that would be a fair and honest resolution of that issue?

Senator KEMPTHORNE. That would be in line with the process of the bill, yes.

Senator LEVIN. But whether you agree with the outcome, if a majority——

Senator KEMPTHORNE. That is right. That would be the process.

Senator LEVIN. Yes, if a majority of us then felt that that mandate should apply to State and local government, assuming a point of order would lie, then the mandate would apply?

Senator KEMPTHORNE. That is correct.

Senator LEVIN. I think this is very important that we understand that the purpose of this bill is to reduce the number of mandates. That is the thrust of this bill. And to force us to consider certain mandates—there are exemptions for other kinds of mandates, but certain mandates we are forced to consider under this bill, if a point of order is raised, and it is always looming.

Senator KEMPTHORNE. Right.

Senator LEVIN. But it is not intended to preclude us by majority vote by imposing mandates on State and local governments. Is that correct?

Senator KEMPTHORNE. That is correct. Again, we do not abdicate our decision-making ability with this bill. I believe we will have more information so that we will make a more informed decision, but there is that waiver provision.

Senator LEVIN. And I agree with this thrust. I think we should be very conscious of what we are doing to people. By the way, not just governments but private sector too. So that we are not raising

expectations above where they will properly be, if this bill passes, it is intended not to preclude us by majority vote to apply a mandate to State and local government if a point of order is raised and if we so decide by majority vote?

Senator KEMPTHORNE. Yes. And, again, I believe that you would find that the officials in local and State government have the full realization of what the process is and how the legislation is spelled out.

Senator LEVIN. I think that is important. Now, the difficulty—am I out of time? I do not want to go over. Was that buzzer for me?

I will just wind up by saying that there is a significant difficulty that the CBO has pointed out in their letter to me. In at least two cases, they say that they probably cannot make the estimate. For instance, the cost of something may be dependent upon regulations. The regulations will not have been issued, and whether or not it is above a $50 million impact or below could depend on what the regulatory agencies determine after a rulemaking process.

In one of the cases given to them, they say they cannot make this assessment, and I think we have to be prepared to deal with that issue, and maybe we should deal with it right in this legislation. What happens where we cannot get an estimate from CBO? Because like on the radon bill they say it is impossible for them to do it. There are 87,000 communities out there, and they cannot determine what the cost of implementing radon would be. And in the family and medical leave bill, they say they cannot make that determination.

So I think that we should spend some time on what happens when you cannot get, even in a bill where there is time, a CBO estimate.

Senator KEMPTHORNE. Again, though, Senator Levin, the process provides that if, in fact, CBO comes back and simply states we cannot do an analysis, then, again, you can go to the floor. You can seek a waiver of that provision based on that rationale. So the process provides for that.

Senator LEVIN. Thank you.

Chairman ROTH. Senator Dorgan.

Senator GLENN. Would you yield just one second? We are on a vote, and I am going to have to go, and congressional coverage legislation is coming up next on the floor, and I have to floor manage the bill. So I will get back, if I can, later this afternoon, but I wanted to apologize in advance for not being present through the whole hearing.

Chairman ROTH. Thank you, Senator Glenn.

Senator DORGAN. Mr. Chairman, as Senator Glenn just indicated, we have just started a vote, so I will ask Mr. Kempthorne just one question. And I know that we want to get to the other witnesses as well.

Do not misinterpret the remarks I indicated in my opening statement. I intend to vote for this legislation and am supportive of its direction. There are a couple of amendments that I probably will offer to this bill. Let me just ask a question about the change in the bill.

This bill would create, as it is now drafted, a new commission to study certain aspects of this. Previously, the Advisory Commission

on Intergovernmental Relations was designated to be the commission that would be used. That apparently has been eliminated from the bill, and I would probably intend to offer an amendment to restore it.

It seems to me like we do not need to create another commission. We already have a commission that is almost perfectly suited to do this job.

I would just observe to you that I would likely want to offer an amendment to restore ACIR in that role rather than create a new commission.

Senator KEMPTHORNE. OK, and I appreciate the point you are making. I would be happy to meet with you on that topic.

Senator DORGAN. And I am going to make one more suggestion that I suppose will get some people scurrying in some of the agencies. I am also likely to offer an amendment calling for a 2-year suspension on enforcement in metric conversion. In all of these Federal agencies, we now have metric conversion enforcement practices moving along, and I think we ought to suspend it for 2 years, do a study on what the metric conversion costs are, who pays them, what are the consequences of them, and have that study reported back to Congress before we decide what to do on more enforcements on metric conversion. I likely will offer that as an amendment to this legislation as well.

Some will say that is very backward thinking. In my judgment, the Metric Conversion Act and the way it is playing out with this policing and enforcement capability bothers me a great deal. At any rate, I simply observe that I will probably offer an amendment of that type as well as we go along.

Mr. Chairman, Senator Kempthorne has done a great service with this legislation, and I have been pleased to work with him on the private sector portion and other portions, and I appreciate very much his testimony today, which I think has been very well constructed and very informative to this Committee.

I think Senator Levin, however, raises important points. We must think through all of these questions and what are the implications of various policies and how they play out. If you are left with a circumstance where at the same time when the government is saying we must be treated like everyone else, we must impose upon ourselves the same obligations as everyone else, and then we have a circumstance where we say, well, except that we will impose a mandate and it will affect the private sector but the public sector is exempted because someone made a point of order, we put ourselves right back in the same old position. And so we need to think through those questions very carefully, and I appreciate Senator Levin's raising that. Mr. Chairman, thank you very much.

Chairman ROTH. Thank you, Senator Dorgan.

Senator KEMPTHORNE. Mr. Chairman, may I just respond to Senator Dorgan?

Chairman ROTH. Yes.

Senator KEMPTHORNE. I appreciate very much his comments. But, again—and we can discuss it further later. But we have the process, much of it is the work that you have helped include, so that we would identify up front in the Committee report, if, in fact,

we think we are creating an unfair advantage of the public sector over the private, so that, again, we know that up front.

Senator DORGAN. And I respect that point. I would only say that, for example, the question Senator Levin asked about the minimum wage, we need to understand the answers to all of those things, because ultimately they are going to be answered one way or another down the line, and we might just as well understand them——

Senator KEMPTHORNE. Right. And I think if you had somebody else sitting in my spot, he would probably answer your question on the issue that you raise. But that is just one that I have—I know we have discussed it.

Chairman ROTH. Well, thank you very much, Senator Kempthorne. I think it is perfectly obvious this legislation would not be before us if it were not for your strong leadership and interest in this matter, and we congratulate you for the Kempthorne bill.

Senator KEMPTHORNE. Mr. Chairman, thank you very much for your leadership. And may I just point out what I think is also important: For the first time, this states that local and State officials must be consulted. It brings them in in this partnership, and along those lines of what was raised earlier about do they realize there may be implications of other funds they currently received, they want to be consulted. They realize that all of us are going to probably do some things with less, but as long as they are at the table to help define that.

Chairman ROTH. Thank you, Mr. Kempthorne. We invite you to stay for the remainder of the hearing.

Senator KEMPTHORNE. Good. I will go vote and be right back.

Chairman ROTH. At this stage, we are happy to invite Sally Katzen to come forward.

Ms. Katzen, it is a pleasure to have you here today. We apologize for the long delay, but this is an important matter, and there are many views to be solicited.

As I mentioned earlier, we would hope that the witnesses would keep their testimony to 5 minutes, and we would include the full statement as if read. But please proceed as you see appropriate.

TESTIMONY OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Ms. KATZEN. Thank you very much, Mr. Chairman. I greatly appreciate the opportunity to testify today on an issue of great importance to all of you, to the Administration, and to State, local, and tribal governments.

You apologized for the delay, but I found it very informative, and I was delighted to be able to sit through the discussion that took place.

I have prepared a written statement. There are a number of people who are also here to speak, and so I would like to simply emphasize our support for your efforts and our determination to help solve this difficult problem of unfunded mandates.

As a former governor, President Clinton understands and is sympathetic to the concerns of State, local, and tribal governments. He knows that we cannot continue to add to the burdens placed on

them by Federal requirements for which Federal funding is not forthcoming.

At the same time, however, there are matters of national policy at stake, and we cannot impair the Federal Government's ability to carry out its legitimate functions. The challenge, therefore, is to improve the process of dealing with unfunded mandates without introducing any unintended consequences. I am gratified that much of the discussion this morning emphasized the process points and the accountability that would flow from S. 1.

Last year, we worked very hard with the President's active encouragement to help with the development of S. 993. It has been mentioned many times this morning that S. 993 was a bipartisan effort, led by Senators Kempthorne and Glenn. It was carefully crafted to be both productive and workable, and we, too, were disappointed that it was not enacted in the final days of the last Congress.

S. 993 has served as the basis for S. 1, and S. 1 has continued to be a bipartisan effort. We appreciate that we have been able to discuss various drafts of S. 1 with Senators Kempthorne, Glenn and other Senators, as well as their staffs. We obviously support those provisions of S. 1 that are based on S. 993. Some of the provisions that have been added to S. 1 are also very clear and helpful. But a few issues do remain, some of which were touched on this morning, which are more a matter of drafting than of principle. As you know, language has been added over the past week, and we have not had an opportunity to think through some of the provisions to give us the degree of confidence that we all should have that the bill is workable and will not have unintended, adverse consequences.

What we are doing will bind us, as it should, for the foreseeable future. We should thus make sure that it really achieves our shared objectives.

A great deal of progress has been made, and the bipartisan efforts last term, as well as through the holiday season, have been productive. We are optimistic we can work together to achieve an appropriate solution.

I need to emphasize that we cannot abandon or unwittingly impair our ability to govern. But so, too, we cannot continue as we have in the past.

The complaints that have been raised concerning unfunded mandates are real. The President has heard them, and he wants to respond to them. He has supported unfunded mandates legislation and made it clear that we are to continue to work with all of you on an expedited basis.

This hearing has helped with understanding the underlying structure and intent of the new provisions of S. 1, and it gives everyone an opportunity to think about and help resolve whatever concerns may be raised.

I appreciate your listening to me this morning, and I look forward to working with you on this issue.

[The prepared statement of Ms. Katzen follows:]

PREPARED STATEMENT OF MS. KATZEN

Good morning, Messrs. Chairmen and Members of the Committee. I appreciate the opportunity to testify today on unfunded Federal mandates. This is a very important issue for the Administration.

State, local, and tribal governments have expressed deep-felt concerns about the difficulty of complying with Federal unfunded mandates. As Governor of Arkansas, President Clinton was fully aware of these concerns. As he said on June 13, 1994:

> As a former governor who faced the burdens of Federal mandates for 12 long years, I know how questions over funding concern everything else you (mayors) do—from putting more police on the street to providing clean water for people in your cities.[1]

We have been moving, with the President's active encouragement, to help solve this difficult problem of unfunded mandates. Last year, we worked to enact S. 993, a bill supported by Senators Kempthorne and Glenn. President Clinton noted his support for this effort to the U.S. Conference of Mayors:

> [O]ur people have been working with Members of Congress who are focused on this mandates issue. I can report to you that we're getting closer to a workable bill. And although there are still a few issues that remain to be resolved, I think we can see legislation acceptable to the Nation's mayors soon.[2]

Two days later, on June 15, 1994, then-OMB Director Leon Panetta wrote to the Governmental Affairs Committee:

> With the Committee mark-up tomorrow of (S. 993), I wanted to express the Administration's support for your efforts to fashion a bi-partisan compromise on this issue. . . . The compromise that has been crafted will improve the process that deals with the issue of unfunded mandates without increasing the gridlock that the President was elected to eliminate.[3]

As then-Director's statement suggests, the unfunded mandates problem presents a basic dilemma: On the one hand, we need to reduce the burgeoning burdens placed on State and local governments by Federal requirements for which Federal funding is not forthcoming. At the same time, however, we do not want to impair the Federal Government's ability to carry out its legitimate functions. There are matters of national policy at stake. To reduce the burden without introducing any unintended consequences requires us to exercise considerable care.

As then-Director Panetta also indicated, S. 993 was a bipartisan effort. OMB and White House staff worked extensively with the staff of other Members of Congress, both Republican and Democrat, to fashion the bill that went to mark-up. While discussions were cooperative and good-natured, there was disagreement, and there was give-and-take. But, through it all, there was good will, and the final version was something that both Senators Kempthorne and Glenn as well as the Administration could and did wholeheartedly endorse.

Such collegial, bipartisan effort is important. Without such efforts, it is harder to make the difficult, but necessary compromises that will assure that the resulting legislation serves the needs of State, local, and tribal governments, but does not, as then-Director Panetta wrote, "increas[e] the gridlock that the President was elected to eliminate." It must be productive and workable.

Given the work that has already gone into S. 993, we think it can serve as a vehicle for prompt passage and signing of unfunded mandate legislation. Having this be the first bill introduced demonstrates its importance to State, local, and tribal governments, and to the public. Since S. 993 served as the basis for S. 1, it also demonstrates that this new Congress is willing to continue with and build upon the cooperative, bipartisan efforts that all of us here engaged in on this issue last term.

We appreciate that we have been able to discuss various drafts of S. 1 with Senators Kempthorne and Glenn, as well as their staffs and the staffs of a number of other Senators. We actively support those provisions that are based upon the carefully drafted language of S. 993, as it was placed into mark-up last year. We have also had the opportunity to review at least some of the other provisions that have been added to S. 1 and we can work with them.

We understand that other provisions were being drafted as I drafted this testimony. Obviously, we have lacked the time to read these provisions and, more impor-

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[1] Remarks by the President in Satellite Feed to Conference of Mayors, June 13, 1994.
[2] Remarks by the President in Satellite Feed to Conference of Mayors, June 13, 1994.
[3] June 15, 1994 letter from then-OMB Director Leon Panetta to then-Chairman John Glenn.

tantly, to think them through so that we can have a high degree of confidence that they are workable and will not have unintended adverse consequences.

One of the often repeated complaints from State and local governments is that provisions are added to legislation with the best of intentions but at the last minute, without an opportunity for adequate analysis. Such provisions have sometimes compounded the unfunded mandates problem. We do not seek delay, but we should not fall into the same pattern that has led to the legitimate complaint to which we are now being responsive.

What we are doing will bind us—as it should—for the foreseeable future; we should thus make sure that it really achieves our shared objectives. We are making progress. The bipartisan efforts last term, as well as through the holiday season, have been productive, and I am optimistic that we can work together to achieve a productive and workable solution. We cannot abandon or unwittingly impair our ability to govern, but so, too, we cannot continue as we have in the past. The complaints that have been raised concerning unfunded mandates are real. The President had heard them, and he wants to respond to them. He has supported unfunded mandates legislation and has made it very clear to us that we are to continue our work together, on an expedited basis.

This hearing helps with understanding the underlying structure and intent behind the new provisions of S. 1 and provides an opportunity to consider and resolve concerns that are raised by them.

I appreciate the opportunity to appear here today before you, and I look forward to working with you on this important matter.

Chairman ROTH. Well, thank you. I am going to put the Committee in recess, because there is a vote going on, and I have to go down and vote. But we will have some questions on our return.

Ms. KATZEN. Thank you.

[Recess.]

Chairman DOMENICI. All right. We will come to order. Could we have order, please?

I understand you have completed your testimony, and I would just like to ask one clarification question, and maybe you could summarize this for us.

This legislation before us, which I understand you have worked on in behalf of the White House and in behalf of Mr. Panetta; is that correct?

Ms. KATZEN. Yes.

Chairman DOMENICI. This states that no determination made under the act is subject to judicial review. Do you agree that this ought to be the case, and if so, why, and are you stating the position of the White House on this issue?

Ms. KATZEN. We had worked on that provision in S. 993, and S. 993 similarly precluded judicial review.

As you correctly pointed out in your opening statement and in your questions to Senator Kempthorne, one of the principal purposes here is accountability and having assurance that the legislators would be aware of the implications of their actions, the costs, etc., to permit reasoned action.

This is an issue which is complicated enough, as we saw from the questions this morning about how it will actually work in practice. To further have the specter of judicial review of any or all of the legislative determinations or any or all of the regulatory decisions would just invite a great deal of extra, burdensome, time-consuming contentiousness in the process. There are better ways of clogging the courts if we wanted to do that. It seems to us that it would not be appropriate to have that aspect in this legislation, which is designed to clarify the issues rather than to compound them.

And I am stating the Administration position on this issue.

Chairman DOMENICI. All right. Do I gather from one of the staff on either Committee that has been here that all of the Senators that wanted to ask questions asked questions?

[Pause.]

Chairman DOMENICI. All right. You are excused. We may have to get a hold of you throughout the markups, which will obviously be occurring within the next 3 or 4 days. And I assume you will be available for us?

Ms. KATZEN. Yes. As I said in my opening statement, this is a very important issue to the President, and he has encouraged us to work with you. I will be available at any time to respond to any questions or concerns or to work through issues of statutory language issues. We have not seen all of the final language. The bill was finally put to bed last evening, I gather. And so we would welcome the opportunity for a discussion on some of the provisions that have raised questions this morning.

Chairman DOMENICI. Well, I would like you to be looking at something for me as Chairman of the Budget Committee.

There is an exception found in this for all independent agencies. And I would like very much for you to be ready to help me by defining all of those and give me at least some idea of why all of them should be exempt. I am not at all sure that just because they are independent agencies that we should not have an opportunity to decide whether they are imposing—we are causing them to impose mandates, and if so, why the same rules should not apply.

Ms. KATZEN. I think that is an excellent question. The exemption was not included at our request. And, in fact, we had raised a similar question earlier as to the basis for independent regulatory agencies not being included. All other aspects of both the Legislative and the Executive Branchs are covered. But I would be happy to work with you on that issue.

Chairman DOMENICI. Right. And if I said "independent agencies," I should have said "independent regulatory agencies," right?

Ms. KATZEN. Correct.

Chairman DOMENICI. Thank you very much for your testimony. I appreciate it.

Ms. KATZEN. Thank you, Mr. Chairman.

Chairman DOMENICI. Senator Roth would like us to proceed. He surely will be here in a couple of minutes. So let us take the third panel. I assume we ought to try to all sit up here together, if that is all right with you, Governor.

We have Governor George Voinovich of Ohio; the Hon. Edward Rendell, Mayor of the City of Philadelphia, U.S. Conference of Mayors; Jane Campbell, Representative from the State of Ohio, National Conference of State Legislators; Commissioner Randall Franke, Marion County, Oregon, National Association of Counties; Councilwoman-at-Large Carolyn Long-Banks, Atlanta, Georgia, National League of Cities; and Boyd W. Boehlje, State of Iowa, National School Board Association.

Governor Voinovich, we are delighted to have you present and commend you for your somewhat eternal vigilance in this regard and your tremendous dedication. Let us hope we will be able to

work together right through the finale and get it done. Please start your testimony.

TESTIMONY OF HON. GEORGE V. VOINOVICH, GOVERNOR, STATE OF OHIO, ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION

Governor VOINOVICH. Thank you, Mr. Chairman.

As you mentioned unfunded Federal mandates have been a top priority of mine for a long time. In fact, 8 years ago in a speech to the National Archives Volunteers on the 200th anniversary of the Constitution, I pointed out that for over 20 years we have seen the expansion of the Federal Government into new non-traditional domestic areas. We have experienced a tremendous increase in the proclivity of Washington both to preempt State and local authority and to mandate actions on State and local governments.

And the cumulative effect of a series of actions by the Congress, the Executive Branch, the U.S. Supreme Court have caused some legal scholars to observe that while Constitutional Federalism is alive in scholarly treatises, it has expired as a practical political reality.

And we have just gotten out from the *San Antonio v. Garcia* case where the court basically said: Congress can do what they want, and if you do not like it and it does not violate the Tenth Amendment, go back to Congress and work it out with them; you have got some political clout.

Let me say at the outset that we would not be here today without Senator Dirk Kempthorne and Senators Roth and Glenn, who came to the National Governors' Association and asked us to get involved in negotiating with the Big Seven organizations to come up with some legislation that we thought we could get through the Senate and through the House on relieving unfunded mandates.

I want to thank you, Mr. Chairman, for your strengthening language to the bill.

Last year we thought that we were going to make it. And we ran out of gas at the end of the session. And it is really hard to believe that we are here, and this is S. 1.

I think that it is a recognition that you all realize that this is a serious matter. I have lived with it for 10 years as the former Mayor of Cleveland and now as governor for 4 years, and I can tell you firsthand the frustration and alarm faced by State and local officials because of unfunded Federal mandates.

They force us to cut vital services, raise our taxes, rob our citizens of their elected representatives to make fundamental decisions in terms of how dollars are being spent.

And, Mr. Chairman, if you really look at how this has been going on, it seems as the deficit has climbed—and I have said publicly in all due respect that the Federal Government is bankrupt, and now they are on their way to bankrupting the State and local governments.

And our job of dealing with problems on the local and State level has become more and more difficult because of actions coming out of Congress.

The command-and-control attitude by Congress, I also think, runs contrary to not only what our Founding Fathers envisioned,

but it is also inconsistent with the total quality management movement that is sweeping our country. That movement empowers and involves the people closest to the problem, whether it be in Government or on the factory floor to solve problems. And I think that this sweep that you see in the country is a recognition that those of us closer to the problems are best able to deal with those problems.

Two years ago in Ohio we decided to get at the facts and look at the impact of mandates. We found that in a 4-year period, unfunded Federal mandates increased States' spending by $1.7 billion; 70 percent of those for mandates from Medicaid.

We also found that our cities, that 12 percent of their revenues were being used to fund unfunded mandates and that by the year 1998 approximately 25 percent of their revenues are going to be used to take care of unfunded mandates. And it is kind of ironic that on one hand Congress is pushing mandates on the backs of our cities; on the other hand, they are providing money for police protection. And I think if they did not have the mandates, they could take care of their own police protection.

I think we all realize that many of these mandates are well-intentioned, and I am not going to get into all the details on that, except to say this, that what we are trying to do here is what Senator Kempthorne said. It is accountability. It is good information. I have always found in my political career that the better information that you have, the better decisions that you can make.

For example, one of the mandates that came out was that we had to use rubberized asphalt in the State of Ohio. Now that is going to cost us $50 million. And there is no evidence that it is more durable; in fact, there is some concerns that it is harmful in terms of the environment.

We could take that money, and we could repave 700 miles of rural roads and fix 137 bridges. But somebody in Congress thought that is a great idea; you take care of it; you pay for it; and we have to use money to take care of paying for it.

There are a lot of other areas here. In the environmental area, for example, the prescriptive system which imposes increasing burdens on our governments with less and less to show for it in terms of tangible environmental benefits. The State Safe Drinking Water Act, for example, requires that communities test for 25 new substances every 3 years.

Last month, I met with Carol Browner, and she agrees that this legislation forces her to impose needless burdens on our Nation's communities. They have to pay for it. But she said: That is what Congress tells us to do.

Perhaps if you had had better information when that legislation was passed, she would not be in the position she is today.

Chairman DOMENICI. Could I just comment? That Safe Drinking Water Act, and in particular those provisions, but many others, are in a bill that has already cleared the Committee, that is waiting to be passed while these are being changed. So we are aware of some of them already, but we do not have the cost estimates, which is an interesting one. Thank you for that observation. It is a good one.

Governor VOINOVICH. I think it is time that we restored a balance in the partnership between the Federal, State, and local gov-

ernments, and I think from an historic point of view, that is what we are considering today.

I would like to finish up with this, and someone else mentioned it earlier. I think maybe you did, Mr. Chairman.

I understand you are going to pass a balanced budget amendment, and I am in favor of a balanced budget amendment. We have had to balance our budgets and so have our local governments over the years. And perhaps if you had had a balanced budget amendment, we would not be in the pickle that we find ourselves in today.

But I will say this, that how that amendment is received in the legislatures throughout this country will have a great deal to do with the legislation that is before you here today and the way Congress handles dealing with the budget deficit.

We are all watching that to see just what happens. And we need assurances that as we go through this process that those costs are not going to be shifted to us. And one of the ways to guarantee it is the strongest mandates relief legislation that you can pass.

Thank you.

Chairman DOMENICI. Thank you very much.

[The prepared statement of Governor Voinovich follows:]

PREPARED STATEMENT OF GOVERNOR VOINOVICH

Thank you Chairman Roth, Chairman Domenici, Senator Glenn, Senator Exon, and Members of the Budget and Governmental Affairs Committees.

I have made the issue of unfunded Federal mandates a top priority throughout my career in public service. In fact, 8 years ago, in a speech to the National Archives volunteers on the 200th anniversary of the Constitution, I said:

> "Over the past 20 years, we have seen the expansion of the Federal Government into new, non-traditional domestic policy areas. We have experienced a tremendous increase in the proclivity of Washington both to preempt State and local authority and to mandate actions on State and local governments. The cumulative effect of a series of actions by the Congress, the Executive Branch, and the U.S. Supreme Court have caused some legal scholars to observe that while Constitutional Federalism is alive in scholarly treatises, it has expired as a practical political reality."

We thought it was bad 8 years ago. It's even worse today. I can't tell you how glad I am to be with you today.

Enactment of this legislation is critical to the Nation's governors. On behalf of the National Governors' Association, the governors strongly and unanimously support S. 1 without any weakening amendments.

Let me say at the outset that we would not be here today without the leadership of Senator Kempthorne. Senators Roth and Glenn, who met with the governors last January, helped launch this process when we all agreed to work with Senator Kempthorne and State and local government organizations to draft a mandate relief bill that would get through the Senate and achieve passage in the House. I would also like to thank Senator Domenici for his contribution to strengthen the enforcement mechanisms in the bill.

Last year the Members of this panel—and every State and local elected official throughout the country—were encouraged that a mandate relief bill seemed destined for passage.

The end result obviously was very disappointing—the bill we worked so hard to draft and pass through Congress died in the final hours of the last session.

But we were heartened with the announcement in November by Senate Majority Leader Dole that this would be the very first Senate bill.

This is testament to Senator Dole's commitment—and the commitment of all the Members of your Committees—to respond to the plea of State and local governments to restore balance to our relationship as envisioned by the framers of the 10th Amendment.

As the Mayor of Cleveland for 10 years, and as Governor of Ohio for the last 4, I know first-hand the frustration and alarm faced by State and local officials because of unfunded Federal mandates.

This is why my first order of business as Ohio Governor was to make mandates a top priority within the National Governors' Association. We've come a long way since then.

Mandates force us to cut vital services and raise our taxes. Mandates also rob our citizens and their elected representatives of perhaps the most fundamental responsibility of government—prioritizing government services.

With all due respect, Mr. Chairman, the Federal Government is bankrupt. And the Congress is on its way to bankrupting State and local governments.

In my Inaugural Address 4 years ago, I said:

> "Gone are the days when public officials are measured by how much they spend on a problem. The new realities dictate that public officials are now judged on whether they can work harder and smarter and do more with less."

Mandates are making this goal more difficult each day. Washington, which believes it has all the answers, is tying our hands with one-size-fits-all solutions.

This command-and-control attitude by Congress runs contrary not only to what our Founding Fathers envisioned, but is also inconsistent with the total quality movement that is sweeping our country. This movement empowers and invites those closest to the people—be they in government or on the factory floor—to improve efficiency and solve problems.

Two years ago, I decided to get the real facts, to find out how bad the mandate problem was in real dollars. We released a study—the first of its kind by any State—that concluded unfunded Federal mandates will cost Ohio more than $1.74 billion between 1992 and 1995.

As my fellow panelists will tell you, the problem is even more acute for local governments. Last year 12 percent of city and county revenues were consumed by mandates. By 1998, existing mandates will cost local governments $88 billion—one-quarter of all their revenues.

As I said in our report, in the past 5 years, education has declined as a share of State spending nationally at a time when nearly everyone acknowledges that improving our schools is one of government's highest priorities

Yet many States cannot spend a greater share of tax dollars on education because new Medicaid mandates consume more and more of our resources. They account for 70 percent of Ohio's mandate costs—nearly one billion dollars over 4 years. Medicaid was 19 percent of Ohio's budget in 1982—it represents one-third today.

I won't disagree that most mandates are well-intentioned. But, in reality, they actually can do more harm than good and often have unintended consequences.

Let me give just two examples.

The most recent Federal highway law forces States to use scrap tires in highway pavement.

I'm not sure why the Congress thought this was a good idea, especially since not a single State transportation agency supported it. In fact, many national experts have real doubts about whether it is more durable, and many others have grave concerns about its potentially harmful environmental effects.

In terms of the cost, we've estimated that this mandate will require $50 million a year in scarce highway resources. For the same cost, Ohio could repave nearly 700 miles of rural highways or rehabilitate 137 aging bridges.

Unfunded mandates also preempt important State initiatives and reduce State and local flexibility and innovation.

For instance, despite that Ohio has developed a comprehensive solid waste management plan, we are still required to change most of our landfill rules to conform to Federal standards that in many respects are weaker than our own.

The net effect is that our regulators are forced to spend time fulfilling Federal paperwork requirements, which reduces their ability to clean up and close landfill sites that pose environmental risks.

All of us on this panel agree—the public is not well-served when Congress unilaterally passes on new mandates that prevent mayors from providing the police protection their citizens rightfully demand or prevent governors from pursuing the reform in education that our children need.

I firmly believe that the two basic questions for all public officials should be:

What should government do? and,
What level of government should do it?

It's long past time that we restore balance in the partnership between Federal, State, and local governments. Ultimately, this is the issue we are considering today.

Senate Bill 1 provides much needed reform toward restoring accountability in government:

It make Members of Congress accountable for passing mandates.
It forces a recognition that mandates impose costs on taxpayers.
It strongly encourages Congress to fund new mandates.
And it erects political and procedural barriers to passing new mandates.

Let us also be clear about what this bill will not do:

First, it does not eliminate any existing statute or mandates, though we will continue to work with Congress to eliminate or modify those that burden State and local governments. As our study points out, more than 174 mandates have been passed by Congress since the mid–1970s.

Second it does not undermine any civil or constitutional right.

And, finally, it does not prohibit the enactment of new mandates. Instead, Congress must work with State and local governments as partners to establish national standards when needed.

This bill represents the first step in a new, long-awaited process of Congress treating States and local governments as equal partners, not as special interests.

The bottom line is that State and local governments should not be treated as special interests. We are elected by the same people who elect you and pay our salaries and pay for the programs we enact.

As a former local official, I am committed to restoring the State-local partnership on Federal issues. At a meeting last month, the leaders of the organizations of all State and local government elected officials agreed to coordinate our work with the Congress so that we can more effectively serve the taxpayers of this country.

During the 104th Congress, we will continue to work with you to offer recommendations to give States and local governments the flexibility we need in such areas as health, human services, and the environment.

I think we can all agree that our collective goal is to deliver more effective, streamlined government. Working together I'm convinced that we will move mountains.

Mr. Chairman, enactment of S. 1—without weakening amendments—is the single most important step Congress can take to begin restoring the balance in Federal, State, and local relations.

Mr. Chairman, and Members of the Committees, I can assure you that what you do with this legislation will have a major impact on our support of a Balanced Budget Amendment, which we expect you to pass.

Thank you very much.

Chairman DOMENICI. Mayor Rendell, from the City of Philadelphia, you are next. We are glad to have you.

TESTIMONY OF HON. EDWARD RENDELL, MAYOR, CITY OF PHILADELPHIA, PENNSYLVANIA, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mr. RENDELL. Yes, good afternoon, Mr. Chairman.

I am here testifying on behalf of the City of Philadelphia and the United States Conference of Mayors, and as has been noted already, this has been—unfunded Federal mandates has been a paramount issue for the United States Conference of Mayors for several years. So we appreciate the opportunity to testify.

I would like to step back for just a moment and look at the history of Federal mandates.

In 1960, according to the ACIR—Senator Dorgan and I serve as members of the ACIR—there were two unfunded Federal mandates. There are now 66 that have passed into law that are unfunded.

But in the beginning, in the 1960s and the 1970s, a lot of the Federal mandates were handed down with either full or partial funding, either grant money or loan money. And we have seen over

the course of the last 15, 20 years that funding almost totally phased out.

For example, construction funds under the Clean Water Act, which were available either in grant form or loans, are almost completely gone. Even loans are almost completely gone now from the passage of Federal legislation. And as your problems have heightened, your tendency to both, (1) pass unfunded Federal mandates has increased, and (2) the tendency to remove even partial funding has increased.

Why are unfunded Federal mandates, bad?

The mayors were at a conference, and a 12-year-old student reporter raised his hand and said: Well, what difference does it make? It is going to come out of our tax dollars anyway. My mom and dad are going to pay taxes. What difference does it make who pays?

Well, the answer to that—and I think it is a very good question—the answer to that is: (1) Localities, local governments across my State and this Nation, many of them have their revenue-raising ability capped by law, and (2) if they are not capped by law, they are capped by practicalities.

In my city when I became mayor, we had 19 tax increases in the 11 years prior to my becoming mayor, and we still had a quarter of a billion dollar budget deficit, and we had driven 30 percent of our tax base out of the city.

So as a practical matter, I could not raise taxes to meet the new demands and mandates.

So what happens? What happens is, we are forced to slash basic services, basic services which, if we were left to do our own prioritization, would come first: police, fire, sanitation, quality of life things like recreation and parks and libraries.

We are forced to cut—as the Governor said, one of the reasons we do not have enough police is because of the existence of unfunded Federal mandates. And it robs us of the ability to make our own priorities.

You have all heard of the killer bees that are moving into Texas. Well, if that is my problem as the mayor of the city, I am not going to put any money into prevention of killer bees while they are in Texas. If they move to Florida, I may take a look at it. I probably would not put any money in. When they get to Northern Virginia, then maybe the City of Philadelphia, in prioritizing its own dollars, ought to be spending money on preventing or education to prevent us from harm from killer bees.

It is our judgment. We have to weigh our priorities. And what you do with unfunded Federal mandates is rob us of making that judgment, the elected officials who are closest to our constituents. You rob us of that opportunity.

We have heard a lot of the goals of Federal mandates lauded, and we certainly support most of those goals. Our position is, if the goal is laudable, the funding ought to be there to achieve and implement the goal.

But when you do not have to pay—and this point has been made over and over again by many of your colleagues. When you do not have to pay for a bill, you tend not to be so careful in the way you craft it and the way you limit it and the way you narrow its scope,

and that creates a lot of atrocious mandates. It creates a lot of mandates that do not make any sense.

The EPA, through a local commission, wanted the City of Philadelphia to construct a tertiary treatment plant on the Delaware River to increase the oxygen level, the dissolved oxygen level in our water for fish. This plant would have cost us $500 million in capital funds and $30 million a year in operating funds. The commission conceded that no fish were dying, but they still wanted us to raise the oxygen level in the water. I could not understand, if no fish were dying, how the commission knew that the fish were uncomfortable. Nonetheless, for the fact that we did not have a high enough oxygen content in the water for the fish, they wanted us to spend $500 million.

When we testified on the Kempthorne-Glenn bill last year—and, Senator Roth, you were there—when we testified, we submitted a study from the *New York Times,* a 10-day study, a 10-day series which showed the ridiculous mandates in terms of the benefits that would be gained, the harm that would be prevented in ratio to the costs that would be required, and we have to take a strong look at what we do.

One of the best functions of this bill is that the CBO is required to consult with local government, to get our analysis of what the real costs are. Because to go back to that tertiary treatment plant question, the EPA gave us an estimate that that plant would cost $50 million to build, even though the year before a similar, an identical plant was constructed in the City of Phoenix with nonunion labor for $500 million. The EPA insisted that it would cost $50 million. I could show you legions of examples where EPA estimates on what the costs to local government would be is totally out of whack with reality, not just by a small margin, but by a wide margin.

So this is a good bill, its time has come. We think it is carefully crafted. The waiver provision, the point of order provision gives the necessary out for the question that Senator Levin asked about maternity leave. You will not hear us, local government, coming in saying do not impose that mandate on us. That is not the type of mandate you are going to hear us putting a lot of pressure on the Congress not to do. But the mandates that cost hundreds of millions of dollars in capital funding and have a tremendous impact on operating, those are the ones you are going to hear from us on, and those are the ones where we should not waive the rule.

[The prepared statement of Mr. Rendell follows:]

PREPARED STATEMENT OF MR. RENDELL

Chairmen and Committee Members, I am Edward Rendell, Mayor of Philadelphia. I appear today on behalf of the United States Conference of Mayors, and I serve as vice-chair of the Conference's unfunded mandates task force.

Let me begin by thanking Senator Roth and Senator Domenici for their continued support of our effort to end unfunded mandates. Without the active help and endorsement of Senator Roth we could not have taken our bill as far as we did in the last Congress. And Senator Domenici has long championed not only this cause, but a wide range of issues of importance to State and local government.

The Conference of Mayors appreciates the opportunity to, once again, testify on the issue of unfunded Federal mandates. I say once again because on April 28 of last year we testified on the very same subject before the Governmental Affairs Committee along with our State and local colleagues. However, much has changed

since last year and I feel obligated to highlight some of the changes which demonstrate how far we have come on the issue of unfunded Federal mandates.

First, on April 28 of last year our legislation, S. 993, had 54 cosponsors. At the end of the 103rd Congress, we had 67 cosponsors for our legislation. Yet with all this bipartisan support, our bill was not scheduled for floor action until the final days of the session, at which time we could not get a final vote on the bill.

Today, our legislation is S. 1 and on the second day of the 104th Congress, you have decided to hold this historic hearing. Clearly this demonstrates the level of support we now have in the Senate.

Second, when we testified on April 28, Governmental Affairs Committee Chairman John Glenn—while expressing support for our cause—had not yet endorsed our legislation. However, by the end of the 103rd Congress, the distinguished Senator from Ohio had not only worked to develop the new consensus package, but also put his name at the top and moved it through his Committee on a unanimous vote.

And today, the Senator from Ohio still stands as our co-leader in this bipartisan effort, and I would like to thank him for his commitment to restoring a balance in the Federal-State-local partnership which has been eroded by unfunded Federal mandates.

Third, when I testified on April 28, our legislation had not been endorsed by the Administration. However, by the end of the 103rd Congress, President Clinton had not only endorsed the bill, but actively worked for its passage. The Administration has continued to be very supportive of our efforts and it is our strong hope that the President will endorse S. 1, and I would like to thank President Clinton for his continued support of State and local government.

But through it all, two very important things have not changed.

First, State and local officials stand united, as we did on April 28, in demanding an end to unfunded Federal mandates. These unfunded mandates limit my ability as a mayor, and the ability of all State and local officials, to prioritize and address the needs and demands of our citizens and communities. And if the recent national elections demonstrated anything, it's that the American people want a government that gets the job done—gets the streets paved, gets the garbage picked up, and fights the violent crime that plagues far too many communities—in the most cost effective and efficient way possible.

Unfunded Federal mandates directly inhibit the ability of State and local officials to respond to these needs by tying our hands and spending our money for us in what is often an ineffective and inefficient way.

It is also our belief that if the Federal Government is required to fund programs which it mandates at the local level; the nature, scope, and intended impact of the programs will be much more carefully designed.

The U.S. Conference of Mayors has invested a tremendous amount of time, energy and resources in studying the fiscal impacts of unfunded Federal mandates, as have our partners at the national association of counties. The Conference survey of 314 cities estimated that over the next 5 years, these cities will spend $54 billion to comply with only 10 Federal mandates. In 1993 alone, the survey estimated that these 10 Federal mandates accounted for 11.7 percent of all locally-raised revenues in the 314 cities.

As the mayors have continually stated, the intent of our efforts is not to challenge the merits of individual Federal mandates and regulations, but to show that the accumulated weight of existing mandates has made it nearly impossible for local governments to prioritize their residents' most pressing needs.

The problem with unfunded Federal mandates is that the Federal Government has turned State and local officials into Federal tax collectors. We collect the taxes to implement Federal priorities and as a result we are not able to establish and fund local priorities.

For example, on March 8, 1994 the Conference of Mayors released a survey of 146 cities which asked them to estimate the additional resources that would become available if Federal mandates were funded in the next fiscal year, and how they would likely allocate these resources. The 146 cities responded that a total of $800.8 million—an average of nearly $5.5 million per city—would be available if Federal funding for mandates were provided. Of this total, 13 percent (19 cities) said they would use all of the resources for policing and crime prevention efforts. And on average, the survey found that 28 percent of the additional resources would be used for policing and crime prevention.

While this survey is simply a snapshot, it demonstrates that unfunded Federal mandates have a direct impact on the prioritization of local spending.

The second fact which has not changed is that our leader, Senator Dirk Kempthorne of Idaho, stands with us today as he has from the beginning. I must say that while many people have had a hand in our success to date, none match

the impact of the Senator from Idaho. From the day he unveiled his legislation at the mayors meeting in New York City, no one has worked harder to stop new unfunded Federal mandates. As a former mayor, Senator Kempthorne truly understands the importance of this issue and has transferred his resolve into majority support in the Congress. He has worked to keep our effort bipartisan. He has worked to reach compromise when necessary without losing sight of the objective of ending unfunded Federal mandates. He has worked to achieve results, not to simply engage in political rhetoric. And most importantly, he has worked in partnership with State and local government to whom he has always stated, "This is your bill."

Because of our efforts together, we now have S. 1. And yes, this bill is stronger than what was before the Senate last year in that it requires Congress to either fund a mandate at the time of passage or provide that the mandate cannot be enforced by the Federal Government if not fully funded. But the bill is still based upon the carefully crafted package agreed to last year which provides a framework for stopping action on mandates which will not be funded.

This legislation would not in any way repeal, weaken or affect any existing statute, be it an existing unfunded mandate or not. This legislation only seeks to address new unfunded mandate legislation. This is not to say that mayors are not extremely concerned about existing mandates—the costs of which have driven us to action—but we understand that problems with existing mandates will be addressed through the reauthorization and legislative process.

This legislation would not infringe upon or limit the ability of the Federal judicial system to enforce any constitutional protection or civil rights statute.

This legislation would not prevent Congress from enacting new mandates, only from enacting new unfunded mandates. Federal goals should be funded by the Federal Government.

And this legislation, as is the case for all acts of Congress, can be waived if a mandate is so important that a majority of the Congress votes, on record, to do so. But if this happens, we will now have a mechanism to hold our elected officials accountable to the taxpayers and to require them to justify their actions.

When we testified last year we warned that, "A revolution is building in America, and we are here today not as the leaders of that revolution, but simply as the messengers."

That revolution has taken place, and while there are many issues and many reasons for the voters' anger, the message is clear: It is time for the Federal Government to take responsibility for its actions. Our legislation will help achieve that result.

In closing I would like to thank the Members of both the Governmental Affairs and Budget Committees for the opportunity to testify here today. On behalf of the U.S. Conference of Mayors, we look forward to working with you on the many important regulatory and budgetary decisions before the Senate.

And we look forward to speedy passage and enactment of our legislation to end unfunded Federal mandates.

Chairman DOMENICI. Mr. Chairman, with your permission—I told you that I have to leave very shortly—I wonder if I might just ask two questions of all of the witnesses, starting with the Governor.

Chairman ROTH. Please proceed.

Chairman DOMENICI. You represent a community or a State or a city or a county or a school district, but you also represent an organization, each of you. Could I ask you in your organizational capacity, do you support the bill as currently written, and is it strong enough in your opinion to meet the test you brought to us when you said we want a strong bill?

The reason I ask is clearly we need to know if it is going to help us with our constitutional amendment for a balanced budget, and we also need to know whether it is supported, so that if amendments are offered, we have your concurrence that the bill as drawn meets your conditions.

Could I start with you, Governor? Would you just answer that for the record, please?

Governor VOINOVICH. Well, I think that what you see before you is a group of people who have worked very, very carefully with Representatives in the Senate and the House to craft a piece of legislation which we feel will get the job done, and at the same time has the safeguards that are necessary to garner the votes of individuals who have some skepticism about whether this is a good piece of legislation or not.

We think that we have struck a good balance. We have worked very carefully with Senator Kempthorne and with Rob Portman, who has been assigned this task by Speaker Gingrich, and feel comfortable with this legislation.

Chairman DOMENICI. Mayor, would you just quickly give us your observation?

Mr. RENDELL. I think that is correct. I might feel more at home with a 60 percent rule. It takes 60 percent for you to bust your own budget. It might be good to take 60 percent to bust ours. Generally, our association would agree with what the Governor said. We worked hard with Senator Kempthorne, and we would support the bill in its current form.

Chairman DOMENICI. Mr. Franke.

Mr. FRANKE. Thank you. I am Randy Franke, representing the National Association of Counties. I think the Governor said it very well, and that is our position, as well.

Chairman DOMENICI. Ms. Campbell.

Ms. CAMPBELL. Thank you, Mr. Chairman.

The National Conference of State Legislatures does support the bill in its current form. To answer your second question about is this going to solve the problem with the balanced budget amendment, the NCSL does also strongly support having the balanced budget amendment itself have language that provides protection for State and local government.

Mr. BOEHLJE. The National School Board Association feels that the legislation is balanced and responsible and is very supportive of the legislation as proposed.

Chairman DOMENICI. Ms. Long-Banks.

Ms. LONG-BANKS. As President of the National League of Cities, I can say unequivocally that we do support the legislation as it is presently drafted and would not like to see any amendments made at this time. We also on the balanced budget amendment support that.

Chairman DOMENICI. You support it?

Ms. LONG-BANKS. Yes.

Chairman DOMENICI. Mr. Chairman, I had some other questions, but I am not going to ask them. I just wanted you to know why I asked that question. It seems to me we have been negotiating and meeting with governors, both Republican and Democrat, for their support for a constitutional amendment. They have indicated they are terribly worried about making sure we are going to do a much better job on these mandates. We may not be able to get that amendment into the constitutional amendment on a balanced budget. It may run its own course, but right now it is very dubious whether both Houses would pass a constitutional amendment with the language on unfunded mandates as part of the Constitution.

Obviously, we are making this as enforceable as possible, so that you are satisfied we have taken a big step in the right direction.

Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Chairman Domenici.

First, let me welcome my good friend and neighbor from Philadelphia, sister city of Wilmington, Delaware. We are delighted to have you here and we appreciate the leadership role that you have taken on this most important matter.

I would like to ask a follow-up question to the question of Senator Domenici. One or two of you expressed the view that you support the legislation in its current form. As you heard earlier today, this could be a very key question. Would that be the consensus here, that it would be wise to enact the legislation in its current form with no further change at this time? Mayor Rendell.

Mr. RENDELL. That is right.

Chairman ROTH. We will go down the line.

Mr. FRANKE. Again, Randy Franke, representing the National Association of Counties. That is our feeling, as well.

Chairman ROTH. I am sorry, I missed your——

Ms. CAMPBELL. Jane Campbell, from the National Conference of State Legislatures. The NCSL also agrees that right now we have a balanced piece of legislation and we would like to see it move forward.

Chairman ROTH. And that was your view, Mr. Franke?

Mr. FRANKE. Yes.

Chairman ROTH. Governor?

Governor VOINOVICH. So are the National Governors, we are supportive of it.

Chairman ROTH. Thank you.

Mr. BOEHLJE. As is the National School Board Association.

Ms. LONG-BANKS. The National League of Cities does support it, yes.

Chairman ROTH. Does anyone feel that the $50 million threshold—and perhaps you have already answered this question—does anyone feel that the $50 million threshold that applies to the mandate funding requirement is too high or too low, or do I take it that it is satisfactory to all of you here, in view of your earlier answer?

Mr. RENDELL. I think, Senator, that it would be satisfactory. Again, it depends on who is doing the counting. That is why the important part of this bill that you consult with local government officials is very, very important. We were having a discussion on the family and medical leave bill, and we were told that would cost no more than $1 for each employee or something like that. That certainly has not turned out to be the case. I still would personally support the bill, regardless of the cost.

But if you extrapolated every local government and the costs that we would all face for the family and medical leave bill, that would well exceed $50 million. It depends, though, who did the accounting. The Senate might have been told that that would not have exceeded $50 million at the time and, therefore, would not have reached the threshold of this bill. So I do think that the provision that local and State government officials have to be contacted by the CBO or by any Federal rulemaking agency is an imperative one.

Chairman ROTH. I share that concern. I think it is very important that there be input from the State and local level. I also think it is going to be an extraordinarily difficult job to estimate, because in many cases it depends on the regulations, and nobody can really anticipate what the regulations are going to require.

Governor VOINOVICH. Mr. Chairman.

Chairman ROTH. Yes, sir?

Governor VOINOVICH. I would say that the consultation would also give some idea about what the regulations are going to be. I think that a lot of legislation that has come out of here, if local and State officials had really been consulted, we could figure out ways of getting the job done much more reasonably than perhaps the legislation as passed. When you start that dialogue, I think you almost get into the kinds of regs that might come out of it and what they would cost. So I think that is the problem.

We run into agencies—for instance, I mentioned in my testimony Carol Browner. I met with her a month or so ago about the Safe Drinking Water Act and the fact that there is a requirement that every 3 years 25 new things are added to the act. She said I cannot do anything about it.

I think, had consultation been made, that they might have added language that said that it has to be scientifically detectable. In our State, they have 52 of them, and there are only 9 of them that science will allow us to detect. So there are certain things by working together that I think we can make real progress in solving problems, but I think also in terms of working harder and smarter and doing more with less.

Chairman ROTH. Well, this Committee will begin some hearings on regulatory reform this month, and certainly it is going to be important to get your viewpoints, suggestions and thoughts and examples of why the present system is not working. So I welcome those comments.

Now, it is my understanding that only two of you have had an opportunity to present your statements, and that is you, Mr. Franke, and you, Mayor Rendell.

Mr. RENDELL. The Governor and I, Senator.

Chairman ROTH. Alright. Why don't we start with the Hon. Jane Campbell.

TESTIMONY OF HON. JANE CAMPBELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

Ms. CAMPBELL. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate your patience trying to struggle through this issue. The National Conference of State Legislatures is very excited to be here and have this be S. 1. I am pleased to be here and want to acknowledge the work that you have done on this issue, the work that Senator Kempthorne has done, and the work that Senator Glenn has done.

We have found an extraordinarily high level of cooperation between the associations represented here at this table and the Members of Congress, and that has been really delightful for us.

You have on your table the Mandate Monitor, which is the newest version I brought for you, something that is put out by the Na-

tional Conference of State Legislatures, so that you can see precisely what we are talking about when we are talking about mandates.

As Senator Kempthorne did point out in his testimony, we counted 7 new mandates in just the last year, bringing us to a total of 20 for the 103rd Congress. So even as we were trying to negotiate on this language, we were still experiencing unfunded mandates becoming part of the fabric of our conversation between the Federal and State governments.

We believe at the National Conference of State Legislatures that this bill is a necessary first step to try to end the practice of unfunded Federal mandates, and we hope that this legislation will begin restoring some sense of balance to the intergovernmental fiscal partnership.

The idea of restoring this balance becomes ever more important, as we are talking about a balanced budget amendment. And I do not need to remind you that once the balanced budget amendment leaves this chamber, 38 State legislatures must ratify it. And if there is going to be a balanced budget amendment actually passed, we at the National Conference would strongly urge the Members of Congress to include language to protect State and local budgets within the constitutional amendment itself.

No language, however, even in a constitutional amendment can take the place of action today on this issue, because the process of a constitutional amendment is so long, that this legislation is the start of trying to change a practice that has become all too common of putting unfunded Federal mandates in as part of the practice.

Now, I serve in the State legislature, and I understand the hours of painstaking negotiations, and I think part of what you saw when you polled us on is this the right version of the bill is that we and our association have been involved in those negotiations and we do think we have a balanced package and we would like you to support it for that reason. Individually, any one of us could have said if we were left to our own devices, we would have done something slightly different. But what you have is a consensus document that I hope you will be able to support.

Chairman ROTH. I think that is a very important statement.

Ms. CAMPBELL. Thank you, Mr. Chairman.

The other thing I think is important for us all to understand is that fundamentally, when we are talking about unfunded Federal mandates and we are talking about a balanced Federal budget, what we are really concerned about is how do we deal with balancing the family budgets of America. Because it does not do us any good for the Federal budget to be balanced and the expenses to be passed on to State and local government, because we do not manufacture money. We get money from the same folks you get money from.

If it just goes to us to come up with those dollars, we have the terrible choice of either we cut necessary services or we raise taxes. We do not like raising taxes any better than you do, and we do not like cutting services, because we are elected to try to provide the services that our citizens need to make the best use of our State resources. And we cannot do that when a significant portion of our

budget is dedicated to those matters which you think were most important as Members of Congress.

There have been numerous examples that have been cited over the past years, so I will try not to go through those. But I think sometimes it is helpful to have a few of those just in your mind, because it adds to understanding this.

The real foundations of S. 1 are three-fold: information, accountability and consultation, that you have the information you need about what is, in fact, the costs to State and local governments of something you are about to do, and that you are then held accountable for the activity and you consult with us on trying to make a change.

I am running out of time, so I will not give you the examples. Let me just conclude to say that this whole piece that is in this new S. 1 that provides us with protection from something that is sort of unique to Congress, the separation between the authorization and the appropriation of money. When we do the budget in the State of Ohio, we have a whole lot of negotiations and then we say these are the programs we are going to do under this set of rules, and this is what we are going to fund, and then the money is there to do it.

Congress is different. You have a mechanism where you authorize programs, you say there are going to be some expenditures, but the money is not there until the appropriation is there. So we are very pleased to see the new feature that says if the mandate is funded in the authorization, it also has to be funded in the appropriation before it can actually be enforced.

In summary, Mr. Chairman, I would say thank you for the work you have done, thank you for your patience, and we would encourage you to support the bill.

[The prepared statement of Ms. Campbell follows:]

PREPARED STATEMENT OF REPRESENTATIVE CAMPBELL

Chairman Roth, Chairman Domenici, Senator Glenn, Senator Exon and Members of both Committees, I am Jane Campbell, the Assistant Minority Leader of the Ohio House of Representatives and the President of the National Conference of State Legislatures. I am pleased to join you and the other elected representatives of State and local governments to speak in favor of the bi-partisan legislation before you today, S. 1, sponsored by Senator Kempthorne. The National Conference of State Legislatures has worked on the problem of unfunded Federal mandates for many years, and spearheaded the effort to bring attention to the issue through publications such as the Mandate Monitor, the newest version of which I have brought with me today. For the record, we counted seven new mandates or preemptions in the last year, bringing the total to twenty for the 103rd Congress. You can see that even as negotiations pressed forward on this bill, unfunded mandates did not stop, and that is why, as with the others present before you, I am here to express NCSL's wholehearted support for the quick passage of S. 1.

We believe this bill is the necessary first step in beginning the process of ending the practice of unfunded Federal mandates. We also hope that this legislation will begin restoring some sense of balance to the intergovernmental fiscal partnership. The idea of restoring balance to this partnership becomes even more important as you consider the Balanced Budget Amendment. I don't need to remind you that after you pass the amendment, 38 State legislatures must ratify it. If there is going to be a balanced budget amendment, we strongly urge that Members of Congress include language that further protects State and local governments against cost shifting and unfunded mandates. No language in the amendment, however, can take the place of action on the legislation we are discussing today.

As a legislator, I know the hours of painstaking negotiations that go into producing legislation such as this, and know that it is also a special piece of legislation

that receives the designation of being the first bill introduced in a new session. On behalf of NCSL, we certainly appreciate the effort and recognition you have given our cause. Thank you. But I also think it is appropriate that your first actions this session deal directly with the problems that the citizens of our communities clearly expressed during the last election. Our constituents are demanding real action to address the financial problems of the government and the concerns of their family. Shifting costs from Washington to the State capitols may help the Federal budget, but it does nothing to address the problems of the family budget and does nothing to help what we like to call the public budget. After all, the mandate from this election was not really about the needs of government, but the needs of the people. State and local governments get their money from America's families. For the Federal Government to pass laws and regulations that require the States to spend money means that we as State legislators have to cut services or raise taxes. We know that we are elected to represent our constituents and to make the best use of our State resources. Our authority to make these critical decisions is undermined when Federal mandates direct not only what we spend our money on, but how we meet our goals.

During the past couple of years, I know you have heard many examples of the scope and nature of unfunded Federal mandates and the difficulties they impose on State and local governments, so I will try to use those types of anecdotes sparingly. But I do have a couple of examples that relate directly to why this bill will work.

S. 1 is built on three foundations: information, accountability and consultation. The informational aspect, with the Congressional Budget Office providing timely analysis on the costs of mandates to State and local governments, may work to stop most unfunded mandates and preemptions before they even get to the floor. I know, even in our statehouse, how difficult it is to have a direct knowledge of every part of every bill that comes through. Given the volume of legislation you consider in any session, it must be impossible to have a complete grasp of all the details of each bill and amendment. The requirement that a bill have a CBO costs analysis before it can be brought to the floor is a kind of stoplight that helps you know that there is a mandate in this bill. It also helps you to begin to understand how much it is going to cost. Our belief is that many Members of Congress will be greatly helped by simply having it brought to their attention that they are about to vote on a mandate.

However, for those that intend to mandate, and because it is my guess that no one can tell me what the 20 mandates were during the past session, or even the seven in the past year, we have an accountability component in S. 1. These provisions end the past practice of working unfunded Federal mandates into sections hidden deep in the text of massive omnibus bills or committee reports. The points of order are another stoplight that build off the informational aspect of the bill. Once you know that a costly mandate exists, you must then decide to authorize funding for the mandate or decide to pass it on to us with a roll call vote. This should not bottle up the process. It simply puts you on record as supporting an unfunded mandate or not. That is accountability.

More accountability comes from following the mandate through the legislative process. Because you have split the authorizing function from the appropriations function, we need something that traces the mandates through the appropriations process. In Ohio, we have a biennial budget process and when programs are established and the budget is adopted, the money is there. Congress is different. If you have decided to fund a mandate, there shouldn't be a back door way to unfund the mandate by not delivering the funds necessary to pay for it. If the Appropriations Committees are not able to fund the mandate, then the mandate does not take effect. This too is accountability.

The third foundation is consultation, and this is where we begin to take the next step toward correcting the imbalance in the Federal system that has led to the proliferation of these unfunded Federal mandates. The States are supposed to be the laboratories of democracy, not the administrative field offices of the Federal Government.

We can all agree that the purpose of welfare is to keep children from starving. Why can't the Federal Government set clear goals and provide revenue to States based on some formula that acknowledges need and resources of the State? Let us be the laboratories of democracy we all intended to be. Follow the welfare example—in Ohio, our eligibility workers have 4,000 pages of Federal regulations with 2,000 pages of clarification with which to contend. In fact, the single biggest cause of "welfare fraud" is overpayment due to a worker's error. None of this administrative overload makes America's families stronger, none moves children out of poverty or enables parents to support their families.

This type of overly prescriptive regulation impedes our ability to address the very problem the program is supposed to address, not to mention the other education and human services functions that cannot be implemented because of the costs that have to be focused on these administrative functions. This also leads us into a public policy straitjacket tailored to produce "one-size-fits-all."

Codifying parts of President Clinton's Executive Orders, as this bill does, and requiring consultation with State and local officials, brings us to the table when the agencies are trying to develop the means of administering any program. It will help us develop a more efficient process for operating programs. It makes us responsible as well for being able to provide you with sound figures on the costs of any specific mandate that you are considering. Please understand that we know this bill also makes requirements of us, but we are ready to answer those challenges and are anxious to begin the process of a stronger partnership. In meetings that I and other NCSL officials had recently with the new leadership of the House, Speaker Gingrich shared with us his desire to find as many ways as possible to bring us to the table during the development of legislation that has an impact on State government. An excellent addition to this bill that builds on that idea is the process that was developed to deal with partial funding of future mandates. It reminds the authorizing committee to plan ahead for only partial funding of this mandate, and encourages you to think through the ways that the mandated goals can be achieved in less costly and less intrusive ways.

Finding less costly and more efficient ways of accomplishing public policy goals are what we are all trying to accomplish. The impact these unfunded Federal mandates have on other areas of the State budget, primarily areas such as education, are great. If you look at the Ohio budget, entitlements and other fixed costs, like prison operations, leave very little flexibility. Indeed, in our State, when tax revenues were underestimated, primary, secondary and higher education suffered because it is funded by discretionary money—threatening investments we want to make for our Ohio citizens.

Because my time is short, I will conclude by saying that we thought S. 993 was a strong bill last year. S. 1 is even better. It has more information, more accountability and more consultation. It is a great first step in addressing the problems of unfunded mandates and NCSL strongly supports this bill. Thank you for the opportunity to speak before you on this important subject.

Chairman ROTH. Thank you very much, Ms. Campbell. We appreciate your being here.

Commissioner Franke.

TESTIMONY OF RANDALL FRANKE, COMMISSIONER, MARION COUNTY, OREGON, AND PRESIDENT, THE NATIONAL ASSOCIATION OF COUNTIES

Mr. FRANKE. Thank you, Mr. Chairman. For the record, I am Randall Franke, Commissioner in Marion County, Oregon, and President of the National Association of Counties.

Let me start by first commending you and Senator Glenn and the other Members of the Committee for moving quickly on this piece of legislation, as well as Chairman Domenici and his Committee for holding this joint hearing.

I would also like to commend Senator Dirk Kempthorne for his championship of this issue early on, even when most people thought it was not going to go any place and would not have any chance of becoming law. I think, through his tireless efforts, we have a bipartisan effort. We had a bipartisan bill the last session that, as you certainly know, we almost got through the process. We had all the Committee approvals, we were sure we had the votes if it could have got to the floor, and we just simply could not get to the floor. That provides the basis for S. 1, with the improvements added, as you have heard some of the testimony today. We are very supportive of that bill. The fact is, on behalf of the National Association of Counties, we offer our strong support for S. 1

as written. The new version is stronger and, like its predecessor, enjoys bipartisan support.

We would like to commend the 56 Senators who we understand have signed on as cosponsors of the bill as of January 4.

Unlike the previous bill, which only required that potential funding sources be identified in any future mandate, the new version will require Congress to either pay for new mandates—and there are several options that are provided for that method—or take a separate recorded vote to impose the cost on State and local taxpayers.

The new bill also exempts legislation protecting the civil and constitutional rights of individuals, national security, and emergency assistance, and a few other categories that were mentioned in the testimony this morning.

And it will not prevent Congress from enacting new mandatory requirements that truly are in the national interest, but it will require Members to consider the cost of all future mandates and their impact on vital services provided by State and local governments. It will also hold Members accountable for any new mandate that is imposed on State and local taxpayers.

We believe this legislation provides a fair and reasonable approach to addressing the mandate problem. And we think to the extent we have had continuous discussions with Members of Congress, as well as our own coalition, we actually have a bill today that is better than its predecessor and better meets, I think, everyone's interest in this very difficult issue.

We were pleased to have that opportunity to work with Congress. We have worked very closely with Senator Bob Dole in the past, and as the new majority leader we know he is strongly committed to enacting a new mandate relief bill. The bill number and the expedited schedule for mark-up and floor certainly indicate his strong support, as well as his comments yesterday in the opening of the Senate.

We sincerely thank the majority leader, and we want you and him to know that we stand ready to assist in any way we can to ensure its swift approval.

At our annual board of directors meeting last month in San Antonio, the board of directors unanimously adopted S. 1 as our top priority for this legislative session, and we will continue to work closely with our sister organizations to ensure the broad-based support for this legislation.

In summary, Mr. Chairman, the National Association of Counties strongly urge all Members in both Houses to cosponsor and support S. 1 and its companion bill in the House. Further, we urge Members to oppose all weakening amendments or any changes to the bill not supported by the leadership.

In the next few days our Members will work with our State and local leaders to urge their Senators and Representatives to pass this important legislation.

That concludes my testimony, Mr. Chairman. Thank you for the opportunity to be here.

[The prepared statement of Mr. Franke follows:]

PREPARED STATEMENT OF MR. FRANKE

Thank you Mr. Chairman. I am Randall Franke, Commissioner in Marion County, Oregon and President of the National Association of Counties (NACo).[1] Let me start by commending you, Senator Glenn and other Members of the Committee for moving quickly on legislation to relieve State and local governments from the burdens of unfunded Federal mandates. I also want to commend Senator Dirk Kempthorne, who is our champion on this issue and who has led the charge in Congress for mandate relief legislation. Last year his tireless efforts produced a bipartisan bill which attracted more than 66 cosponsors. It was later approved by committees in both Houses but failed to win final approval.

In the aftermath of this congressional inaction, county officials across the Nation took our case to the American people in the November elections. When we discussed this issue with the voters, it didn't take long for them to understand that each new mandate drives up their State and local taxes. We also explained that it was difficult to hold Members accountable for their decisions because they vote on mandates without knowing how much they will cost State and local governments, and many times they do so without a recorded vote.

Needless to say, they were outraged and we believe last November's election was a clear indication of the level of their dissatisfaction with unfunded mandates among many other issues. With the biggest turnover in congressional membership in more than 40 years, we believe the message was very clear. The American people voted for change and they will never again tolerate the unbridled flow of mandates from Washington that drive up their State and local taxes and reduce the level of services they receive. Like State and local governments, the Federal Government must learn to set priorities and live within its means.

Mr. Chairman, today I am here on behalf of our Nation's counties to voice our strong support for S. 1, the new mandate relief bill authored by Senator Kempthorne. The new version is stronger and, like its predecessor, enjoys bipartisan support. We want to highly commend the 56 senators who we understand have signed on as cosponsors of the bill as of January 4.

Unlike the previous bill which only required that potential funding sources be identified in any future mandate, the new version will require Congress to either pay for new mandates (by approving a new entitlement program, new taxes or appropriations) or take a separate recorded vote to impose the cost on State and local taxpayers.

The new bill also exempts legislation protecting the civil and constitutional rights of individuals, national security and emergency assistance. It will not prevent Congress from enacting new mandatory requirements that truly are in the national interest. But, it will require Members to consider the cost of all future mandates and their impact on vital services provided by State and local governments. It will also hold Members accountable for any new mandate that is imposed on State and local taxpayers. We believe this legislation provides a fair and reasonable approach to addressing the mandate problem.

We are very pleased to have the opportunity to work with the new leadership and the new Congress. In the past we have worked very closely with Senator Bob Dole and, as the new majority leader, we know he is strongly committed to enacting the new mandate relief bill. The bill number and the expedited schedule for mark up and floor action strongly demonstrate the priority status he has given this issue on his legislative agenda. We sincerely thank the majority leader and we want you and him to know that we stand ready to assist you in any way we can to ensure its swift approval. I also want to commend the Chairman of the Senate Budget Committee, Senator Pete Domenici, for his support.

On the House side, I had the pleasure of meeting with Speaker Newt Gingrich right after the November elections and he assured me then that he too is strongly committed to passing a similar bill early this session. The speaker is not only interested in putting the brakes on mandates but also in consolidating many Federal programs to cut costs. He is also considering turning over some Federal programs to State and local governments and giving us the resources and flexibility we need to carry them out. We are also pleased that President Clinton supported our efforts to enact mandate relief legislation last year and we are urging him to support our efforts to pass the new legislation.

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[1] The National Association of Counties is the only national organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government. The goals of the organization are to: improve county government; serve as the national spokesman for county government; serve as the liaison between the Nation's counties and other levels of government; and achieve public understanding of the role of counties in the Federal system.

At our annual board of directors meeting in San Antonio, Texas last December, our board members unanimously endorsed mandate relief as our top legislative priority in 1995. We are in the process of alerting our 3,043 counties about pending action on the new bill. We will also continue to work closely with our sister organizations to ensure broad based support for the legislation.

In summary Mr. Chairman, the national association of counties strongly urge all Members in both houses to cosponsor and support S. 1 and its companion bill in the house. Further, we urge Members to oppose all weakening amendments or any changes to the bill not supported by the leadership. In the next few days our Members will work with other State and local leaders to urge their senators and representatives to pass this important legislation. After its enactment, we look forward to assisting you in every way to ensure its effective implementation.

That concludes my testimony Mr. Chairman and again, thank you for the opportunity to testify. I would be happy to answer any questions at the appropriate time.

Chairman ROTH. Thank you.

Next I would like to call on Councilwoman-At-Large Ms. Long-Banks.

TESTIMONY OF CAROLYN LONG-BANKS, COUNCILWOMAN-AT-LARGE, CITY OF ATLANTA, GEORGIA, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Ms. LONG-BANKS. Thank you very much, Mr. Chairman and the Members of your Committee, as well as Senator Domenici's Committee, for having us here today.

There is no issue as important to the leaders of the Nation's cities and towns this afternoon than in assuring them a return to a sense of accountability, and to assuring local taxpayers that local taxes and fees may once again be devoted to meeting public safety and other priorities and needs.

I must add a special note of honor and appreciation this afternoon at being able to testify on legislation sponsored by a former mayor, Senator Kempthorne, co-chaired by a former city elected official, Chairman Domenici, and co-chaired by a cosponsor of this bill, Chairman Roth, who helped, with the Ranking Minority Member, Senator Glenn, to steer this legislation so close to passage last year. Your combined experience and commitment is very much appreciated.

The National League of Cities represents 150,000 public elected officials from cities and towns, large and small, across the country. These leaders have charged me to do whatever it takes to earn your support and commitment to move this legislation through Congress in as bipartisan manner as possible. I am here to obtain a commitment from you that you will support the mandates relief bill, S. 1, and will work for full Senate passage next month.

Let me explain exactly how unfunded mandates affect our local governments and their citizens. Simply put, an unfunded Federal mandate is a law or regulation that requires a city or a town to undertake an action and responsibility, with consequent costs to the local budget but no reimbursement by the Federal Government.

Such mandates more often than not are one-size-fits-all, so that they are often inappropriate for many communities. But, most importantly, they put an uncompensated Federal requirement ahead of the public health and safety of the citizens of any community.

For instance, last October 1, an EPA rule was triggered into effect mandating every local government in the Nation to obtain an EPA stormwater permit for every discharge point in a community.

We know that the average cost to larger cities is $625,000 per permit, or the equivalent of more than six police officers per year in a smaller city.

It is our job, as local elected officials, to weigh these decisions about which actions are most crucial to public safety. Yet, this Federal action on October 1 allows for no such balancing. Failure to comply with the Federal mandate subjects us to not only Federal enforcement and penalties, but also citizens' suits.

Because of the civil and criminal penalties attached to the unfunded Federal mandates, local dollars must fund Federal environmental programs, regardless of demonstrated need or effectiveness, while priorities regarding public safety, education, public health, police and fire protection, and infrastructure repair are squeezed. Shouldn't our citizens be concerned about their safety? Shouldn't they have some equal rights?

In our 1994 survey of municipal elected officials which we will be releasing January 18, it shows that 74.6 percent of our members reported that the unfunded Federal mandates condition worsened in 1994. They reported that this issue topped the list of "most deteriorated conditions" in cities over the last 5 years.

In my city, Atlanta, and in virtually every city and town across America, the most serious perceived threat to public safety in America today comes from crime and violence. The most serious obstacle to our efforts to meet that threat comes from unrestricted, unfunded Federal mandates sapping and diverting our resources.

We need the ability and flexibility to focus our resources and to protect our citizens. We can no longer afford to have our resources diverted to meet a laundry list of standards set by another level of government that bears little accountability to our citizens and taxpayers.

Unfunded Federal mandates are not just of concern to State and local officials. They affect the American people as citizens and taxpayers. Almost every State and local government operate under a constitutional or statutory balanced budget requirement. In order to implement unfunded Federal mandates, the money has to come from somewhere. Usually it comes from our citizens in the form of increased taxes and fees, or in reduced public services.

The reason why we care about unfunded mandates——

Chairman ROTH. Your time is running out. Could you summarize the remainder, please?

Ms. LONG-BANKS. Yes. Again, I think we have made the point, and by coming last I believe that I would only be repeating things that the other representatives have said. But I do want to emphasize that we want to make sure that the bill, which is a consensus document, stays the way that it is, and that we are available to work with the Senators at any time.

[The prepared statement of Ms. Long-Banks follows:]

PREPARED STATEMENT OF MS. LONG-BANKS

Messieurs Chairmen and Members of both Committees, thank you for the opportunity to speak today on behalf of the National League of Cities, of which I currently serve as President. I am here to both thank you for the foundations laid in 1994 on the issue of unfunded mandates relief for State and local governments and to urge your swift action and enactment of S. 1. There is no issue as important to the leaders of the Nation's cities and towns this morning than in assuring them a

return to a sense of accountability and to assuring local taxpayers that local taxes and fees may, once again, be devoted to meeting public safety and other local priorities and needs.

I must add a special note of honor and appreciation this morning at being able to testify on legislation sponsored by a former mayor, Senator Kempthorne; co-chaired by a former city elected official, Chairman Domenici; and co-chaired by a co-sponsor of this bill, Chairman Roth, who helped, with the Ranking Minority Member, Senator Glenn, to steer this legislation so close to passage last year. Your combined experience and commitment is appreciated.

NLC represents some 150,000 public elected officials from cities and towns large and small across the country. These leaders have charged me to do whatever it takes to earn your support and commitment to move this legislation through the Congress in as bipartisan a manner as possible. I am here to obtain a commitment from you that you will support the mandates relief bill, S. 1, and will work for full Senate passage this month.

Let me explain exactly how unfunded mandates affect local governments and their citizens. Simply put, an unfunded Federal mandate is a law or regulation that requires a city or town to undertake an action and responsibility with consequent costs to the local budget, but no reimbursement by the Federal Government. Such mandates are, more often than not, one-size-fits-all, so that they are often inappropriate for many communities. But, most importantly, they put an uncompensated Federal requirement ahead of the public health and safety of the citizens of any community.

For instance, last October 1, an EPA rule was triggered into effect mandating every local government in the Nation to obtain an EPA stormwater permit for every discharge point in a community. We know that the average cost for larger cities is $625,000 per permit—or the equivalent of more than six police officers per year in a smaller city. It is our job, as local elected officials, to weigh those decisions about which actions area most critical to public safety. Yet, this Federal action on October 1st allows for no such balancing. Failure to comply with the Federal mandate subjects us to not only Federal enforcement and penalties, but also citizens' suits.

Because of the civil and criminal penalties attached to unfunded Federal mandates, local dollars must fund Federal environmental programs—regardless of demonstrated need or effectiveness, while priorities regarding public safety, education, public health, police and fire protection, and infrastructure repair are squeezed. Shouldn't our citizens concerned about their safety have some equal rights?

In our 1994 survey of municipal elected officials which we will be releasing the week after next, 74.6 percent of our members reported that the unfunded Federal mandates condition worsened in 1994. They reported that this issue topped the list of "most deteriorated conditions" in cities over the last 5 years.

In my city—and in virtually every city and town across America—the most serious, perceived threat to public safety in America today comes from crime and violence. The most serious obstacle to our efforts to meet that threat comes from unrestricted, unfunded Federal mandates sapping and diverting our resources. We need the ability and flexibility to focus our resources to protect our citizens. We can no longer afford to have our resources diverted to meet a laundry list of standards set by another level of government that bears little accountability to our citizens and taxpayers.

Unfunded Federal mandates are not just of concern to State and local elected officials; they affect the American people as citizens and taxpayers. Almost every State and local government operate under a constitutional or statutory balanced budget requirement. In order to implement unfunded Federal mandates, the money has to come from somewhere. Usually it comes from our citizens in the form of increased taxes and fees, or in reduced public services.

The reason why we care about unfunded mandates is not because we are "opponents of Federal health standards" or that we are out to "undermine Federal protection of health and safety." It is exactly the opposite. State and local officials are committed to protecting the safety and health of the citizens we serve, but unfunded mandates are making this task nearly impossible to accomplish. We would all like to eliminate every risk there is in our communities. But in a world of limited resources, we have to make choices. Failure to fund Federal mandates avoids the responsibility of making choices.

For more than a decade, it has been increasingly the Federal Government that has set the standards designed to protect the health of the public, but the State and local governments that assumed the responsibility (and liability) for implementing and enforcing these standards.

That is the rub. There not only has been no consensus reached between the various levels of government with regard to shared responsibilities, but rather an in-

creasing clash. Over the last two decades the Federal Government has arrogated to itself—and to itself alone—the authority to determine health and safety standards—more and more to be paid for entirely by State and local taxpayers. There can be no question that what was once a partnership has seriously deteriorated. Where once we shared common responsibilities, today the Federal Government imposes its own standards—irrespective of our abilities to afford Federal spending habits.

Over the last two decades, Congress has enacted 185 new laws passing the buck to State and local tax and rate payers. Yet, during this same period, the Federal partnership that once helped finance Federal mandates has declined precipitously. The General Revenue Sharing program begun under former President Nixon to distribute assistance to States and local governments on a basis of fiscal need is gone. The municipal wastewater construction treatment grants program, the largest direct program providing direct assistance to local governments when Ronald Reagan came into office is gone—replaced by a loan program at scarcely 10 percent of the size.

By any measure, the cost to States and local governments of complying with Federal environmental and labor requirements is escalating. More and more, the Federal Government simply decides what we must do. It leaves the issue of how to pay to us.

Because current Federal environmental and other unfunded Federal mandates make no choices and offer no flexibility to us to set priorities in a sane fashion, they undercut resources. They fragment resources and force local spending without regard to use of resources that would mean the greatest benefit in terms of saved lives and property.

All State and local governments must annually or biennially determine their spending priorities. With a limited amount of funds, not every program can be implemented. But the Federal Government has increasingly undercut the priorities of our families and citizens.

In contrast, the Federal Government has an enormous advantage—no matter how many priorities it identifies, it can implement all of them by passing the buck to State and local governments. The recognition that State and local governments are partners in governance has eroded in direct proportion to the number of unfunded Federal mandates imposed. Mandate relief legislation is the opportunity for Congress to restore balance in government and ensure effective and efficient problem solving at the local level.

And I want to make very clear that no issue has united Democrats, Republicans and State and local officials over the last decade than this. We, together this morning, speak for the Nation's elected governors, State legislators, and county and city elected officials—the public elected officials representing all Americans. This is an issue which unites all of us. The current convention that it is the Federal Government's role to make the rules and our taxpayers' responsibility to pay is simply no longer acceptable. It must change.

We are united in our efforts to support Chairmen Pete Domenici and Senators Roth and Kempthorne to change the rules. We have been and will continue to work together with these leaders, and others like Reps. Portman, Moran, Ewing, and Clinger—and dozens of others who are co-sponsors of mandate relief bills, and hundreds of others who are co-sponsors—to insist upon a true partnership, and to insist upon greater responsibility and accountability by the Administration and Congress.

Let me now move beyond the frustration felt by local elected officials dealing with unfunded mandates to the promise of relief that S. 1 offers. I am very pleased that unfunded mandates is now being viewed by Congress as a priority issue. Senator Kempthorne, Senator Glenn, and the Members of the Governmental Affairs Committee have been instrumental in moving this issue to the legislative forefront, and we appreciate their hard work and commitment. We also express our gratitude to the Budget Committee for its assistance in improving upon last session's Kempthorne-Glenn bill. The alterations incorporated from their suggestions are well-crafted, provide an effective method of enforcement, and recognize permeability as an essential component.

I believe the bill we have before us is precisely the solution State and local governments have been searching for—it holds Congress accountable and forces it to provide funding for its mandates. Our goal is to force the Federal Government to set priorities and stand behind them—this legislation will accomplish that goal.

S. 1 is also flexible in nature—a concept we have long encouraged in legislation and regulatory rulemaking. The bill allows unfunded mandates to be imposed upon State and local governments by a majority override. We see this provision as an important strength of the bill. We recognize that there will likely be occasions where national priorities must take precedence over the protections from unfunded mandates this bill grants. This majority override provision affirms our position that the purpose of S. 1 is not to derail Federal initiatives, but rather to ensure that Con-

gress carefully considers all the implications of its actions and that only legislation of crucial and national nature be enacted at the expense of State and local governments.

Let me reiterate that our motivation is simply that of our role as public servants. The fundamental question that drives us is how can we best provide for the health, safety, and welfare of our citizens. Answering this question becomes many times more difficult when our resources are increasingly dedicated toward implementing unfunded mandates rather than responding to the needs of our citizenry.

In a perfect world, local governments would have unlimited resources, would be able to eliminate virtually every risk to the health, safety, and welfare of our citizens, and would not have to prioritize or make choices between programs. Unfortunately this perfect world is the impossible dream of every local government official.

In the very imperfect world local governments currently operate in, we are burdened by unfunded mandates and simultaneously face severe fiscal constraints. We must prioritize and make choices. Because local governments are forced to implement unfunded Federal mandates, Federal priorities must be chosen over local priorities. A Federal regulation that is expected to save one life every 20 years becomes more important in fiscal terms than a local police squad that is expected to save hundreds of lives per year.

The system of checks and balances set up by the founding fathers was not motivated by a desire to frustrate the policymakers or the public, but to ensure careful consideration of legislation and to protect against the enactment of misguided policies. S. 1 provides such a check. It is necessary because years ago Congress discovered a trap door in the system—it discovered that the easy way out of raising Federal taxes and prioritizing Federal initiatives is to pass the costs on to State and local governments. S. 1 bolts that trap door and ensures that it be used in emergencies only.

Thank you for your time and consideration of this very important issue. I would be pleased to answer any questions.

Chairman ROTH. We appreciate your statement, and we will look forward to continue working with you on this matter.

Ms. LONG-BANKS. Thank you.

Chairman ROTH. Mr. Boehlje.

TESTIMONY OF BOYD W. BOEHLJE, PRESIDENT, NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. BOEHLJE. Thank you, Mr. Chairman. I am Boyd Boehlje. I am president of the National School Boards Association, and I am a school board member from Pella, Iowa. I am here today representing the National School Boards Association and our 95,000 local school board members across this Nation.

As locally elected and appointed government officials, school board members are uniquely positioned to address Federal legislative programs from the standpoint of public education without consideration of their personal or professional interests. I am particularly pleased to be here today with this particular panel of people who have worked as partners with the Members of Congress to put unfunded mandates on the legislative agenda.

I want to thank you, Mr. Chairman, Chairman Domenici, Senators Kempthorne, Glenn, and Exon, Representatives Clinger, Portman, and Condit. All are among the many Members who have been very active in bringing this bill forward and sustaining the focus on problems created by unfunded mandates.

Let me tell you a little bit about local school board members. Most of them are not paid for their service. They give their time because they care about the education of their children and the children of the community, and they want to ensure that those children get the best education school board members can provide.

One of the problems they have is that unfunded Federal mandates serve as a constant stumbling block on fiscal resources that these community leaders have available for the education of their children, and I think it is a fair statement to say that unfunded Federal mandates affect every one of our Nation's 15,000 public school systems.

Too often the consequences of implementing costly federally mandated programs means that school boards have to go into tradeoffs. They have to decide whether they are going to have larger class sizes; or they are going to postpone purchases of up-to-date curriculum materials; they are going to even eliminate some educational programs, and especially in those areas where they don't have the local capacity to raise taxes.

And when they can't raise taxes locally to pay for a mandate, then the expense has got to be borne by a local property tax, which is probably the most difficult and regressive method for raising taxes.

What we are trying to do is just assure that the children in America obtain the education they deserve. We want that education for the students. They need it. The parents and the taxpayers expect it, and I know Congress wants first-class education for America's school children.

But you must understand, and we must all understand, that every dollar we spend to fulfill an unfunded mandate or an underfunded mandate is $1 that cannot be used to help our students achieve excellence in education.

We control a budget across the Nation, in school boards, of more than $250 billion, and too much of this budget is diverted by programs mandated but not paid by the Federal Government.

GAO completed a study about 3 years ago and found that 15 school districts alone spent almost $30 million during those 3 years on federally required asbestos removal. The Federal Government contributed $142,000 to that clean-up. Another example: A Houston school district has spent more than $46 million in the past 10 years to remove asbestos with virtually no Federal assistance.

These and other school districts don't have much room to maneuver in their budgets. Most school systems spend $3 of every $4 on wages and benefits for their employees, and the remaining dollar goes for all other expenditures, including the entire education program.

Several months ago Congress passed H.R. 6, the Improving America's Schools Act, which is a $12 billion reauthorization of the major education programs for schools grades K through 12, and we need this money to help students achieve the highest educational standards. We can't afford for Congress to turn around next week or next month and take most of it away with another unfunded mandate.

This year Congress is going to reauthorize the Individuals with Disabilities Act, which is one of our most expensive and underfunded Federal mandates. As was mentioned earlier, when Congress passed this law, it pledged to pay 40 percent of the annual cost of the special education mandate. Instead, the government only pays 7 percent and the school districts pay almost $27 billion each year from local and State resources.

S. 1 offers a comprehensive approach to stopping the flow of underfunded mandates that occur in every facet of school business, from mandates in the area of labor relations to environmental testing and abatement, to tax-exempt bond issuance and earnings requirements, to a broad range of educational programs for traditional and special education needs.

If Congress fails to pass S. 1, there will be a dual impact which will be an enormous continuing financial drain on local governments and the time and focus of school leaders lost from their appropriate business of education programs. Taxpayers who complain about the quality of public schools are finally learning that Members of Congress must be held accountable for the votes that spend education's scarce dollars.

The very children Congress seeks to help are the ones who are hurt most by the growth of unfunded mandates. We urge you to put children and their education first. We ask you to pass S. 1 in its present form and reject any weakening amendments.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Boehlje follows:]

PREPARED STATEMENT OF MR. BOEHLJE

Good morning, I am Boyd W. Boehlje, President of the National School Boards Association (NSBA) and a school board member from the Pella Community School District, in Pella, Iowa. I am here today representing NSBA on behalf of the over 95,000 local school board members responsible for governing local public school districts across the Nation. As locally elected and appointed government officials, school board members are uniquely positioned to address Federal legislative programs from the standpoint of public education, without consideration to their personal or professional interests.

I am pleased to be here today with the elected officials that worked as partners with Members of Congress to put unfunded mandates on the legislative agenda. I want to applaud Senators Kempthorne, Glenn, and Domenici, and Representatives Clinger, Portman, and Condit, among the many Members of Congress who have worked hard to bring and sustain congressional focus on the problems created by unfunded Federal mandates. NSBA appreciates the opportunity to testify on an issue of such great importance to every school board member across the country.

Before I begin, let me spend a moment telling you about school board members. The vast majority of school board members are not paid for their service. Rather, they give their time because they care about the education of their own children and the children in their community. The education, as well as the health and safety of those children, is a very real concern for these community leaders. They want to ensure the children in their community get the very best education school board members can provide. As a result, unfunded Federal mandates serve as a constant stumbling block on the fiscal resources those community leaders have available for the education of their community's children.

Unfunded Federal mandates affect every one of our Nation's 15,000 public school systems. School boards across the country are struggling to find the money to pay for the programs the Federal Government tells us we must conduct. Too often, the consequences of implementing costly federally mandated programs means school boards face unpalatable tradeoffs: larger class sizes, postponing purchases of up-to-date curriculum material, even eliminating educational programs—especially in those areas of the country that do not have the capacity to raise taxes. When school districts can raise taxes to pay for the mandate, the expense is borne by the local property tax, which is the most difficult and regressive method for raising taxes.

Local school boards across America are trying to ensure that our students obtain the education they deserve. We want it, the students need it, the parents and taxpayers expect it. I also know Members of Congress want a first-class education for America's school children. But Congress must understand that every dollar we spend to fulfill an unfunded or under-funded Federal mandate is one dollar that cannot be used to help our students achieve educational excellence.

School boards nationwide control a total operations budget of more than $250 billion. Too much of this money is being diverted to programs mandated, but not paid

for by the Federal Government. The magnitude of the unfunded mandate burden on schools is astounding. Several studies of school districts around the country reveal costs that no school district could withstand without endangering education programs.

In 1994, thirteen school districts that comprise one county in California with a K–12 student population of only 117,000, added up the cost of required programs and found that for only twelve unfunded mandates, the cost was more than $70 million over 3 years. That's $70 million that is not going to expand computer availability or replacing aging school buses or adding books to the libraries. It's $70 million taken away from those children.

The General Accounting Office completed a study 3 years ago and found that 15 school districts spent almost $30 million during 3 years on federally required asbestos removal alone. The Federal Government only paid $142,000 to fund the clean up. In another startling example, the Houston school district has spent more than $46 million in the past 10 years to remove asbestos, with virtually no Federal assistance. Experts estimate the total cost to the Nation's schools of the asbestos mandate has been $10 billion.

These and other school districts have virtually no room for maneuvering in their budgets. Most school systems spend $3 of every $4 on wages and benefits for their employees. The remaining dollar goes for all other expenditures, including the entire educational program, such fixed items as debt service, utility charges, facility maintenance and repair, and running what is most likely the largest transportation system in the community.

Several months ago, Congress passed H.R. 6, "Improving America's Schools Act," the $12 billion reauthorization of the major education programs for students in grades K through 12. This is money we need to help students achieve the highest educational standards. But we cannot afford for Congress to turn around next week or next month and take most of it away with yet another unfunded mandate.

This year, Congress will reauthorize the Individuals with Disabilities Education Act, which is one of our most expensive, under-funded Federal mandates. When Congress originally passed the law, it pledged to pay 40 percent of the annual cost of the special-education mandate. Instead, the Federal Government pays only 7 percent, leaving school districts to pay almost $27 billion each year from local and State resources.

Current mandates have imploded the budgets of virtually every school district in this country. S. 1 offers a comprehensive approach to stopping the flow of unfunded mandates that occur in every facet of school district business—from mandates in the areas of labor relations to environmental testing and abatement to tax-exempt bond issuance and earnings requirements to a broad range of education programs for traditional and special needs students. If Congress fails to pass S. 1, there will be a dual impact: (1) the enormous fiscal drain; and (2) the time and focus of school leaders lost from their appropriate business of educational programs.

The taxpayers who complain about the quality of public schools are finally learning that Members of Congress must be held accountable for the votes that spend education's scarce dollars. The very children Congress seeks to help are the ones who are hurt most by the growth of unfunded mandates.

The National School Boards Association urges Congress to put children and their education first. School board members ask you to pass S. 1 and to reject any weakening amendments.

Again, thank you for the opportunity to testify before this Joint Committee hearing.

Chairman ROTH. Well, the hour is growing late, and I want to thank each and every one of you for being here today. I am not going to ask you any additional questions because I think you have made the most important statement of all. That is that you support the present legislation and you urge that it be enacted as quickly as possible in its present form, without change

The fact that you are speaking not only for yourselves but for the States, for the counties, local governments, cities, legislatures, as well as school boards, makes this a very, very meaningful statement.

We are going to hold the mark-up next Monday. As you heard earlier, there has been a request that it be delayed, but it is our

intent to expedite this legislation as quickly as possible, and we are hopeful that it can be before the President in the very near future.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, I regret that I was over on the floor of the Senate and attending to some other business, so I missed a number of the presentations, but I have had a chance to review some of the statements that have been presented.

You make an excellent case. You have heard me say that it will be my intention to support this legislation. I helped draft part of it. You also heard me say, and I would address to Governor Voinovich, that this is a two-way street.

I don't know whether you were in the room and you heard me complain that even as we impose requirements, in some cases ill-advised requirements without funding, on other levels of government, other levels of government impose obligations on us that in some cases are ill-advised. I used as an example the bogus provider taxes that some States are imposing in order to suck money out of the Federal trough for Medicaid.

Some have said, "Well, we wouldn't have to do that if we didn't have unfunded mandates." My point is, when we pass this legislation—and I think we will, and I think the President will sign it—because I think responsibility is a two-way street, I hope there will be substantial change in the NGA and elsewhere on some of these other policies: bogus provider taxes and other issues.

I would be happy—I don't know whether you were in the room when I mentioned that.

Governor VOINOVICH. No, I wasn't, but I am familiar with what you are talking about. I mentioned earlier in my remarks to Senator Roth that I think part of the problem that we have had in this country over the years is, there hasn't been enough communication between Members of Congress and the governors and State and local government officials.

I think that had there been, a lot of what we are confronted with today, we wouldn't have it, or we would be doing things in a better way than we are now doing them. We would be using—I talk about value. The public wants the same thing from us as they want when they go out to a store. They want value. They want a quality product for the least amount of money.

The issue is, how do we work together to best get the job done, and then whether it should be here or locally, and then who funds it and who administers it. So I think that hopefully this is the beginning of a new partnership, I think one that is very, very essential if we are going to accomplish, frankly, what I would like to see as the devolution of power back to the States and restoring of a balance that our forefathers envisioned in the Constitution, particularly the Tenth Amendment.

So I think these are things that we are confronted with, but I think working together, you are going to see some real progress made.

Senator DORGAN. Well, I think that is the case, and I agree with those who say that when you disconnect the location of where money is raised from the location where money is spent, you don't always have judicious use of the money by those who spend it.

I know that we have a substantial amount of funding moving back and forth, programs that are designed to be national in scope for which we provide funding, and they say, "Well, provide the funding, but no strings." What happens is very often the bureaucrats not only create strings, they create a maze of strings that no one even understands, let alone can comply with.

So we need to get back to a better balance. I come from a town of 300 people, and the Federal Government's presence was the post office and a flag or two, but essentially that was the relationship of the Federal Government to my home town. Now our relationship to every home town is very substantial.

The points that you have made are very cogent and important and relevant points. I would simply observe again, it is always a two-way street, and we need to do things differently.

I have felt so upset at times by this provider tax—I hate to keep bringing it up—in Medicaid, because I think it is such a hoax, and designed clearly as a hoax to extract more Federal money. So when people say to us, "You need to reform," I say, "You bet, and I will be there voting for the reform." But I say to others, "You need to reform, as well," because practices on both sides, I think, have gotten out of hand.

Mr. Franke, one final point: When you make the point that this legislation needs to be passed as is, without amendments, you heard me say that I intend to offer a couple of amendments, one of which I have talked to Senator Kempthorne about, a minor amendment but important to me.

We need not create a new commission. We need to restore the legislation as it was, and have the Advisory Commission on Intergovernmental Relations play the role envisioned in this legislation. That is the way that it was drafted and remained up until last Tuesday, and I will obviously try to change that.

But you also heard me mention the metric system. I intend to offer an amendment of that type. What is your impression of that?

Mr. FRANKE. Senator Dorgan, first of all—and Chairman Roth—I am not an expert on the metric system, so I will just—my testimony specifically said as is, with no amendments without the support of the leadership. If you can get the support of Senators Kempthorne, Roth, and Durenberger, then I think we will be OK with that.

Senator DORGAN. Well, I am now part of the Democratic leadership, so I will consider that as part of your caveat.

Mr. FRANKE. Thank you.

Senator DORGAN. Senator Roth, thank you.

Again, you provide excellent testimony, and I think you will all have cause to celebrate, because I think this legislation will be signed into law. Thank you very much.

Chairman ROTH. Governor Voinovich, I do have one further question I would like to ask you. I think you make a very important statement in your prepared statement where you say, "I believe that two basic questions for all public officials should be what should the government do and what level of government should do it."

There has been a lot of discussion about trying to sort out in a better manner what level of government takes responsibility for

what activities; that part of the problem we have today is, the Federal Government has begun to become involved in everything, and it is sort of messing up the whole pie instead of being helpful, at least as was originally intended.

Would it be helpful, in your judgment, to try to hold some kind of intergovernmental conference at which all of the groups you are talking about try to see if we can't begin making some headway, some common sense as to what level of government should be involved in what?

Alice Rivlin, the head of Congressional Budget Office several years ago, in a book she wrote prior to coming back into government, takes the position that this should be done. I wonder, what is your comment? And I would be interested in any other comments, as well.

Governor VOINOVICH. Oh, I really think that it is incumbent that it occur, particularly in the work that you are going to be doing to deal with reducing the deficit, because necessarily you have to start considering, are these programs needed? Should we be in it? Should it be in the local government?

If you decide that it is—I like to use the Head Start program, which is one of my favorites. We are the leader in the country. We spend more money, State money, on Head Start than any State in the Nation. We consider it to be a very good education program. There are only 12 States that are involved.

Perhaps you might take the position that this is an education issue, it is a State responsibility, it is a local responsibility. We are going to stay in this and say to States, "If you want to participate, you have to match it. If you are not, we will put the money into reducing the budget. For those of you that are in it, in 10 years we are out of it, or 5 years. You will have to pick up the tab."

I think that if you don't do that, then what will happen is that as you cut away at some of these programs, we will end up picking up the cost of them on the local level, or they won't be picked up and then you are going to have a disastrous effect, particularly if you are talking about some of the things that deal with the safety net.

So I think as we move through this deficit reduction issue, that we need to start to look at some of these things and deal with them in a very responsible way, because I think if we don't do that, that this whole business of devolution and trying to move back from where we are—and it has taken us since the Depression to get here—is not going to work.

So I think your suggestion is well taken, and perhaps the best way to deal with it is to take certain programs that you are dealing with in terms of the deficit and say, "Whose responsibility are these?" And then if they are local, how do they fund them, and how long is it going to take for them to pick up the responsibility?

I went through this. I was a mayor for 10 years. I started out—I left after 10 years with $79 million less in Federal money. Half the CDBG went out. Revenue sharing went out. Twelve hundred employees on CETA when I came in as mayor, they disappeared. It is tough. We had to increase our taxes in the City of Cleveland by one-third in order to compensate for the loss of these dollars.

And I think that people have to start understanding the reality of all of this, that some of this stuff is really necessary. And if you don't pay for it, you cut it out, somebody has to pay for it, and that's going to happen either on the local or the State level.

So we have a real challenge, and the more we discuss it and do what you have just suggested, the better off I think all of us are going to be.

Chairman ROTH. Thank you very much.

Ms. LONG-BANKS. I think, Senator, that our constituents that we all represent sometimes get very confused as to what responsibilities there are on all the various levels of government. And such a conference as that, I think, would be very, very helpful for us to redefine what the roles are for each level of government and also to use it as an educational tool to take back home to our constituents, so that they will know who is responsible for our various delivery of services.

Chairman ROTH. Well, we may have some hearings on this proposition in the near future, and if so, we would welcome the comments of the groups you represent.

Well, thank you very much again. I think your being here is extremely helpful in expediting the process. And we hope that in the very, very near future this legislation will actually be law.

It is now my pleasure to invite Panel 4, Justin Dart, the Former Chairman of the President's Committee on Employment of People with Disabilities, and Nancy Donaldson, the Legislative Director of the Service Employees International Union. It is a pleasure to welcome both of you.

Mr. WEISMAN. My name is James Weisman. I am accompanying Mr. Dart. I am an attorney for Eastern Paralyzed Veterans Association, New York City.

Chairman ROTH. Thank you. We look forward to hearing your testimony. We would ask that you, as we have in the past, keep it to 5 minutes, and your full statement, of course, will be included as if read.

Mr. Dart, would you care to start out?

TESTIMONY OF JUSTIN DART, FORMER CHAIRMAN, PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES; ACCOMPANIED BY JAMES WEISMAN, ATTORNEY, EASTERN PARALYZED VETERANS ASSOCIATION, NEW YORK, NEW YORK

Mr. DART. Yes, Mr. Chairman. It is an honor to appear before your Committee today. My testimony today will focus on civil rights. And I am very pleased that the Unfunded Mandates Reform Act of 1995, which is the subject of this hearing, does not apply to laws that prohibit discrimination on the basis of race, religion, gender, national origin, or disability status. This is entirely appropriate, morally and economically.

Our forefathers and mothers came to this country because we offered unique legal guarantees of equal opportunity. They got rich, and America got rich. Every time we expanded our civil rights guarantees to include another oppressed minority, America got richer.

On July 26, 1990, President Bush signed the Americans with Disabilities Act, the world's first civil rights law for people with disabilities. Throughout all history, people with disabilities have been regarded and treated as subhumans. At worst, we have been killed or left to die as beggar outcasts. At best, we have been isolated recipients of subsistence welfare.

Mr. Chairman, there are no words to tell you what it means to me and to more than half a billion people with disabilities in the world that the ADA, that the United States of America, has declared us to be human beings with the same rights as other human beings.

And then, Mr. Chairman, how can I express to you what we who have disabilities feel when the ADA, when our citizenship, is called a burden to the Nation, a law that should be repealed or amended to meaninglessness?

The Bill of Rights, the Emancipation Proclamation, the Civil Rights Act of 1964 have been sources of litigation and expense, but they are not burdens to the Nation. They are the power, the majesty, the soul of the Nation. The ADA is part of that beautiful soul.

But what about all these problems? They say that the ADA is going to bankrupt States, cities, counties, and businesses.

Mr. Chairman, no one has gone bankrupt because of the ADA. No one will go bankrupt because the ADA specifically states that no public entity or business can be forced to take any action that would result in undue financial burden. It also states that, when necessary, services can be delivered to citizens with disabilities in alternative ways that are equitable and cost-effective.

Mr. Chairman, nothing could be more Republican, nothing could be more Democrat, nothing could be more in harmony with family values, with reforming welfare, with reducing the deficit, and with the American heritage than opening the doors of free enterprise democracy to Americans with disabilities. We get off of welfare, and we work. Every county, city, and State will prosper. Every American will prosper.

Finally, Mr. Chairman, the leadership of the 104th Congress is examining the very foundations of our democratic system. This is at once a terrifying challenge and a magnificent opportunity. As we approach this historic task, let us not forget that democracy is still a promise to be kept, not only to people with disabilities, not only to the middle class, but to millions of people who are poor, people of color, Hispanics, Asians, women, older people, children, religious minorities, gays, and many others.

Mr. Chairman, we of the civil rights community will work with you to create Total Opportunity America. But we will resist with all of our strength any change that will exclude any American child or any American adult from a real, practical opportunity to participate in the American dream.

Let us join together—Republicans, Democrats, and Independents, liberals and conservatives, rich, poor, and middle class—let us together keep the sacred pledge: One Nation, under God, indivisible, with liberty and justice for all. Thank you, Mr. Chairman.

[Applause.]

[The prepared statement of Mr. Dart follows:]

PREPARED STATEMENT OF MR. DART

I have often inquired of myself, what great principle or idea it was that kept this Confederacy so long together. It was not the mere matter of separation of the colonies from the motherland; but something in that Declaration giving liberty not alone to the people of this country, but hope to the world for all future time. It was that which gave promise that in due time the weights should be lifted from the shoulders of all men, and that all should have an equal chance.—Abraham Lincoln

The paramount goal of the United States was set long ago. It is to guard the rights of the individual, to ensure his development, and to enlarge his opportunity. . . . Our enduring aim is to build a Nation and help build a world in which every human shall be free to develop his capacities to the fullest. We must rededicate ourselves to this principle and thereby strengthen its appeal to a world in political, social, economic and technological revolution.—Canham, Conant, Darden, Greenwalt, Gruenther, Hand, Kerr, Killian, Meany, Pace and Wriston. Report of the Commission on Goals For Americans appointed by President Eisenhower

I agree with you that "this Nation is founded on the principle that each human life is sacred and inviolable. People with disabilities have an absolute right and responsibility to participate fully and equally in society, and to maximize their quality of life potential in manners of their own choosing." —Ronald Reagan, January 5, 1984, in a letter to the National Council on the Handicapped commenting on its policy statement recommending full civil rights coverage for Americans with disabilities.

Members of the Committees, it is an honor, and a profound responsibility to appear before you at a time when the very nature of American government is being examined. I served as a member of the National Council on Disability and Commissioner of the Rehabilitation Services Administration in the Reagan Administrations, and as chair of the President's Committee on Employment of People with Disabilities under President Bush and, until December 1993, under President Clinton.

I am pleased that the Unfunded Mandate Reform Act of 1995 which is the subject of this hearing, does not apply to laws that prohibit discrimination on the basis of race, religion, gender, national origin or disability status.

This is entirely appropriate. Our adversarial political dialogue has sometimes created the impression that civil rights is a kind of bothersome burden that do-gooders impose on sound business and sound government. History says no.

Civil rights and free enterprise are two sides of the same solid gold cultural currency that has revolutionized the productivity and the quality of human life.

Our forefathers and mothers came to this country because we offered extraordinary legal guarantees of equal opportunity. They got rich and America got rich. Every time we expanded those civil rights guarantees to include another oppressed minority, Americans got richer. With the strongest civil rights guarantees in the world, we have one of the highest standards of living and one of the lowest tax rates among industrial democracies.

America is not rich in spite of civil rights. America is rich because of civil rights. Rich in money. Richer yet in human dignity.

Senators, I am here today as an advocate for the civil rights of all Americans. I contracted polio in 1948, when I was 18. I have been a wheel chair user ever since. It didn't take me very long to discover that people with disabilities are subject to a massive residue of ancient prejudice and obsolete environments. From my first day as a freshman at the University of Houston, until I received my master's degree, I had to beg passers-by to carry me up and down steps to every single class. After 3 years as an honor student in the education department, I was told that I would be denied a Texas teacher's certificate because of my wheel chair.

I looked around me. African Americans were not allowed to be students at all. Hispanics were barely tolerated. Women were kept in their place. I became a life long civil rights advocate.

My younger brother Peter, was a top air force jet pilot when, like me, he was disabled by polio. He struggled for more than 2 decades against hostile attitudes and hostile environments. Finally, 6 years ago, no longer able to bear the pain of rejection by his beloved Nation, unwilling to accept dependency, he took his own life. Thousands have made the same tragic decision.

My father, Justin Dart, Sr., was a fierce Republican and crusader for democracy—a member of the Reagan "kitchen cabinet," which he insisted did not exist. He

taught me the importance of public service. He said, "Jus, get into politics as if your life depended on it. It does."

Senators, America has been good to me. For every bad break, I've had ten good ones. I love this country. I'm so proud of America, not because it's perfect, but because it stands for action to make the human dream live.

I was never prouder to be an American than on July 26, 1990, when President Bush signed the Americans with Disabilities Act.

The ADA is a landmark in the evolution of human beings, the first comprehensive civil rights law for people with disabilities in the history of the world.

It is the emancipation proclamation for 49 million Americans with disabilities and a shining symbol of hope for almost a billion persons with disabilities in other nations.

There are no words to tell you what it means to me and to millions of Americans with disabilities to be legally recognized as American citizens, as human beings.

And so, it would also be impossible to convey to you the depth of the anger and the terror we feel when we read that our sacred, hard won civil rights law is still characterized by some as a source of unwarranted litigation, a burden to States, communities and businesses, an unnecessary law that should be repealed or amended to meaninglessness.

Senators, the Bill of Rights, the Emancipation Proclamation, the Civil Rights Act of 1964, the Voting Rights Act, the Fair Housing Act have been sources of litigation and expense. But they are not burdens to the Nation. They are the power, the majesty, the soul of the Nation.

The ADA is not a burden to the Nation. It is the most recent landmark on our magnificent march to the promised land where our dream of justice and prosperity will be lived by all.

It is a brilliant blueprint for rational change. It is probably the most cost-effective civil rights law ever passed. It will enable millions of citizens with disabilities to rise from welfare poverty to become workers, customers and taxpayers. According to President Bush, excluding millions of people with disabilities from the productive mainstream costs $200 billion cash annually in public and private funds. The ADA will cost a tiny fraction of the amount it will save.

The ADA provides the proper balance between the civil rights of people with disabilities and the legitimate concerns of State and local governments, employers, and private businesses. It is flexible, allowing different solutions in different situations. It has numerous provisions designed to eliminate undue hardships and undue financial burdens frequently described by those concerned about unfunded mandates.

Attorney General Dick Thornburgh, in 1989 Congressional testimony stated it this way: "This bill is fair, balanced legislation. It builds on an extensive body of statues, case law, and regulations to avoid unnecessary confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply."

Senators, the section in the ADA applicable to State and local governments is basically one sentence long—it specifies that State and local governments must comply with the very same standards set out in Section 504 of the Rehabilitation Act of 1973. Most State and local governments, as recipients of Federal financial assistance, have been subject to Section 504 rules of nondiscrimination for over 20 years.

In other words, those governments that have taken reasonable steps over the past 20 years to eliminate architectural and other artificial barriers in compliance with Section 504, are most likely already in compliance with the ADA. It is those governments that have done the least over this period that are now complaining the loudest.

During the last 3 years I have personally held at least two forums in each of the 50 States to dialogue with leaders of State and local governments, business, and the disability community about full, harmonious, and cost-effective implementation of the ADA. I would like to share with you what I have found.

First, those communities which have developed formal communications among people with disabilities, government officials and private businesses have had the greatest success in implementing the ADA in a cost-effective manner.

People with disabilities often know the cheapest way to ensure compliance.

For example, an architect might propose redesigning a water fountain to lower its height at a cost of several thousand dollars. On the other hand, a person with a disability would suggest installing a cup dispenser for under five dollars.

Mayor Bob Lanier of Houston has fostered a cooperative implementation of the ADA. A conservative former businessperson, he was re-elected recently with the full support of citizens with disabilities, and 90.9% of the total popular vote. Houston's credit rating is double A.

Second, there is a lot of fear and misunderstanding out there about the costs of compliance with the ADA. This fear is being fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

The fears being raised now about the impact of the ADA are similar to those misgivings that were raised in the first few years following the implementation of Section 504 of the Rehabilitation Act. There were predictions that those covered by the Section 504 regulations would be bankrupted or forced to severely curtail or alter their services. These doomsday predictions were based on ignorance and myth and proved completely false.

Similar misgivings in the area of race discrimination surfaced in 1965 and proved to be equally unfounded.

Doomsday predictions about the ADA have not come true; they will not come true.

I have included a list of typical mis-understandings in appendix 1 of my written testimony. Let me give you some examples.

State and local officials have told me how burdensome it is to require that all public buses be retrofitted with lifts. I tell them that they are misinformed—buses are not required to be retrofitted; only new buses require lifts. Further, the Federal Government pays a significant portion of the cost of the lift.

State and local officials have complained to me about how they have to make every existing building, every existing entrance way, and every existing bathroom accessible. A local official told me about the burden of installing an elevator in a small rural library.

I tell them someone is selling them a bill of goods.

With respect to existing facilities, the ADA regulation (section 35.150 of part 35 of the Code of Federal regulations) includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or every floor of every building. In other words, a public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible. The regulations also state that the ADA:

—does NOT necessarily require a public entity to make each of its existing facilities accessible;
—does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and
—does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

And the bottom line: the ADA specifically states that no public entity or business can be forced to take any action that would result in undue financial burdens.

In sum, I have found that the more people understand about what the ADA does and does not require, the more comfortable they feel about implementation.

Third, I have also learned that the ADA is frequently used as a scapegoat for local officials who want to renovate a building but cannot muster sufficient local support.

Last year I read in a weekly newspaper that a tiny impoverished West Texas county was going to have a county commissioners' meeting to vote for "renovations to the court house required by the ADA"—an automatic elevator, new bathrooms, all kinds of expensive things I knew they couldn't afford and the ADA did not require.

I called the county judge and offered to come to the meeting and explain that the ADA really didn't require them to spend all that money in a time of budget problems. He said, "Justin, come to the meeting if you want to, but keep your damn mouth shut. I finally got the votes to fix this run-down courthouse right and by God I'm going to do it."

Senators, the ADA may be misunderstood, but it is not a burden. It's a well thought-out, well-written, cost-effective civil rights law. It declares me to be a human being and I thank God for it.

Nothing could be more Republican, nothing could be more Democrat, nothing could be more in harmony with family values, with reforming welfare, with reducing the deficit and with the American heritage than the ADA, which opens the doors of free enterprise opportunity to Americans with disabilities. Every county, city, and State will prosper. Every American will prosper.

What we need is not less civil rights, but more information, and more courage to use it. I respectfully suggest a simple economical solution for the problems of misinformation about the ADA, and the resulting unnecessary expense and the denial of rights. Congress must appropriate a sufficient amount of money to allow the Department of Justice to provide accurate ADA information to State and local communities, to business, and to people with disabilities.

Finally, Senators, the leadership of the 104th Congress has announced an aggressive agenda to dramatically reshape public policy, to examine the very foundations of our Federal system.

This is at once a terrifying challenge and a magnificent opportunity. As we approach this historic task, let us not be overwhelmed by frustration with the natural growing pains of democracy. Let us not be tempted by the poll takers' passion for instant, pseudo solutions and easy scapegoats.

Let us ensure that the changes we make are changes of the people, by the people and for the people—all the people.

Let us ensure that the remodeled edifice of democracy rests firmly on the concepts that bind us together as a Nation, that have enabled us to create the most just, most prosperous culture in the history of human kind: independence, not dependence, inclusion not exclusion, empowerment, not paternalism, investment in the future, not subsidy for the past, self-disciplined productivity, not spendthrift escapism.

Senators, we of the civil rights community will work with you to create total opportunity America. But we will resist with all our might any effort to divide this Nation. We will resist any change that will exclude any American child or adult from a real, practical opportunity to participate in the American dream.

Let us join together, Republicans, Democrats and Independents to make our magnificent dream real in the life of every person.

Thank you for the opportunity to share my views with the Committee. God bless you.

APPENDIX 1—FLEXIBILITY OF THE ADA LEGAL FRAMEWORK

Overview of the ADA Legal Framework

The landmark Americans with Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, and State and local government services.

The regulation promulgated by the Department of Justice implementing Title II of the ADA (State and local governments) is found in Part 35 of Title 28 of the Code of Federal Regulations.

Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities.

Because Title II of the ADA essentially extends the nondiscrimination mandate of Section 504 to those State and local governments that do not receive Federal financial assistance, the ADA regulation parallels the provisions of existing Section 504 regulations. This approach is based on Section 204 of the ADA which simply incorporates by reference Section 504 regulations previously issued by the Justice Department.

Definition of "Disability." The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. This is the same definition included in Section 504, the Fair Housing Act, and the Air Carriers Access Act.

Employment. Title I (and Title II for State and local governments) specifies that an employer may not discriminate against any qualified individual with a disability in regard to any term, condition, or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing Section 504, including the obligation to provide *reasonable accommodations unless it would result in an undue hardship on the operation of the entity.*

Public Services, including public transportation. Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a public entity, i.e., State or local government. As explained above, the ADA regulations parallel Section 504 regulations.

The regulations provide that renovations and new construction must be "readily accessible to and usable by" individuals with disabilities. "ADAAG" (Americans with Disabilities Accessibility Guidelines for Buildings and Facilities) standards must be

followed unless the Attorney General certifies that State standards provide equivalent access.

With respect to existing facilities, the ADA regulation includes a standard which is referred to as the "program accessibility" standard. What this means is that the program of services must be made accessible, but not necessarily every building or very floor of every building.

For example, according to the regulations, a public entity can comply through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternative accessible sites, or any other methods that result in making its services, programs or activities accessible. The regulations also state that the ADA:

> —does NOT necessarily require a public entity to make each of its existing facilities accessible;
> —does NOT require a public entity to take any action that would threaten or destroy the historic significance of an historic property; and
> —does NOT require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

To the extent structural changes in facilities are undertaken to comply with the "program accessibility" standard, State and local governments are given *3 years*, however, in any event, the changes should be made as expeditiously as possible.

With respect to public transportation provided by public transit authorities, all new fixed route buses must be made accessible unless a transit authority can demonstrate to the Secretary of Transportation that no lifts are available from qualified manufacturers, despite the fact that good faith efforts have been made to locate such lifts, and that a further delay in purchasing new buses would significantly impair transportation services in the community served. *There is no requirement to retrofit any existing bus.*

A public entity must also provide paratransit for those individuals with disabilities who cannot otherwise use mainline accessible transportation up to the point where the provision *of such supplementary services would pose an undue financial burden on the transit authority.*

New stations must be designed and constructed in an accessible manner. However, only key existing stations serving rapid rail and light rail systems must be made accessible as soon as practicable but in no more than *30 years* where modifications are extraordinarily expensive (with two-thirds of the stations to be made accessible with *20 years*).

Typical Misunderstandings About the ADA

The ADA provides the proper balance between the rights of people with disabilities and the legitimate concerns of State and local governments. It allows maximum flexibility and it does not place undue burdens on State and local governments to comply.

Unfortunately, there is a lot of fear and misunderstanding by State and local officials about the costs of compliance with the ADA. This fear is fueled by lawyers, architects, builders, and self-styled expert consultants whose only interest is to promote profits for themselves.

Set out below are examples of "myths" versus "realities" about the ADA.

Self-Evaluations and Surveys

A large county in the Southwest contracted with an architectural firm for a survey of their *existing* buildings. The firm utilized the barrier removal standards of the ADAAG, which cover alternations and new construction. Because this higher standard of accessibility was used (which was the incorrect standard), Title II's more flexible "program accessibility" standard was ignored.

The firm indicated that each existing barrier, in every building, must be removed, which would have cost millions of dollars. The Department of Justice advised the county of Title II's "program accessibility" requirements and provided concrete examples of ways Title II compliance could be achieved with minimal structural changes. In fact, many of the compliance recommendations required no structural changes.

A large county in the Northeast undertook an expensive survey of every building in the county, including not only places where the public received services and participated in programs, but such places as garages where construction equipment and snow plows were stored. Since architectural barriers at employee-only work spaces do not prohibit people with disabilities from receiving the benefit of a public entity's programs, these barriers need not be removed. The employment provisions of the

ADA might require barrier removal at employee-only work spaces, but only when barrier removal is used to reasonably accommodate a disabled applicant for employment.

A school district in Troy, New York was advised by a consultant that all schools had to be retrofitted with elevators and that one school with an elevator required a second elevator to shorten an accessible route. The school district was advised that other alternatives could be explored (e.g., classes on ground floor, alternative locations for PTA meetings, etc.).

The City of Albany was advised that all restrooms in city buildings had to be made accessible. They were advised that a targeted retrofit of selected restrooms could satisfy the ADA's access requirements.

A county Health Department north of New York City was about to renovate a building to make it accessible when it was informed that its programs were already accessible since all services were available at convenient, alternative sites.

The Ulster Veterans Office provided inaccessible van service for trips to the VA Hospital in Albany. There were advised to purchase a new accessible van. EPVA told the agency to contract with an ambulette service when necessary.

Historic Buildings

A small county in Pennsylvania housed its Veterans Affairs office in a very small building which is listed on the National Register of Historic Places. Because this building was not wheelchair-accessible, the Veterans Affairs staff had adopted the practice of conducting interviews and any other necessary business at the homes of clients who used wheelchairs or other mobility devices.

An architectural firm, which had been hired by the county, advised the country to construct a ramp to the building's entrance and to renovate the interior to comply with accessibility standards. The Department of Justice informed county officials that the home visit policy of its Veterans Affairs office complied with the ADA "program accessibility" requirements and no structural changes were necessary. Estimated cost savings were $20,000.

The Cooperstown, New York historic City Hall was advised to install an elevator to hearing rooms on the second floor. They were informed that, when necessary, hearings could be held on the first floor, which was already accessible.

Polling Sites for Elections

A question was raised whether polling places in existing inaccessible facilities must be made accessible under the ADA. The Justice Department explained that existing polling places are not required to be accessible, provided alternative methods are effective in enabling individuals with disabilities to cast a ballot on the day of the election. A policy of taking the ballot outside to a voter who is unable to enter the polling place is an acceptable method of providing program access.

Hearing Rooms in Town Hall

A question was raised whether the hearing rooms located on the second floor (which was inaccessible) in Town Hall would have to be made accessible in order to come into compliance with the ADA. In this case, the Town acknowledged that the second floor of the Town Hall could be reached only by ascending a flight of stairs and that the second floor is inaccessible to some people with disabilities. The first floor of the Town Hall was accessible.

The Justice Department found that the Town was not required to make the second floor accessible because it had adopted a policy that specifies that when people with disabilities need to access a program, service, or activity (including hearings) on the second floor, the Town will relocate it to the first floor.

Curb Cuts

A question was raised regarding the scope of a government's obligation to make streets accessible i.e., curb cuts. The Department of Justice explained that Section 35.150(d)(2) of the ADA regulations States that public entities with responsibility for or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walks cross curbs. Priority must be given to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. This schedule must be included as part of the transition.

However, the Department also explained, that Section 35.150 does not necessarily require a curb ramp at every intersection. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of "program accessibility," even if an individual with a disability may need to travel a longer route to reach a particular building than would a nondisabled individual.

Further, in residential areas, as opposed to commercial areas, it may be appropriate to establish a procedure for installing curb ramps upon request when an individual with disabilities moves into a neighborhood. Moreover, the fundamental alternation and undue burdens defenses will limit the number of curb ramps required in many cases.

In the case of new construction and alterations, the rules requires that curb ramps be provided at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

Athletic Fields

A question was raised whether every softball field in the city would have to be made accessible. The city was particularly concerned with the expense of providing access to a field that was built down in a ditch so there were steep walls surrounding it.

According to the "program accessibility" standard, this field would not have to be made accessible so long as other fields in the city were accessible.

Parks and Recreation

A question was raised by the New York State Department of Parks and Recreation about ensuring access to the seashore. "Would sandy beaches have to be paved." The answer is obviously "no." At Jones Beach State Park, lifeguards unroll a vinyl mat which gives wheelchair users the ability to travel across the sandy beach. Paving the beach is not required because such an approach would "fundamentally alter" the nature of the beach. Fundamental alterations are not required.

In accordance with the "program access" requirement. New York State was not required to make all beaches accessible. However, New York State chose to make all beaches accessible in the manner previously described because of its low cost and ease of administration.

A large city conducted a survey of all of its parks and recreation areas. The architects informed the city that it would cost millions of dollars to make all the parks accessible. Before the contracts were let, the city was informed that the "program accessibility" standard only required that some, but not all, of the parks be made accessible.

A City in Central New York planned to close a municipal pool because officials received an $84,000 estimate to render it accessible. They were advised to relocate a proposed ramp and purchase a portable transfer tier, saving tens of thousands of dollars.

COMMON QUESTIONS ABOUT TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

1. Q: Do we have to retrofit every existing municipal building in order to meet the accessibility requirements of the ADA?

A: No. Title II of the ADA requires that a public entity make its programs accessible to people with disabilities, not necessarily each facility or part of a facility. Program accessibility may be achieved by a number of methods. While in many situations providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility, the public entity may pursue alternatives to structural changes in order to achieve program accessibility. For example, where the second-floor office of a public welfare agency may be entered only by climbing a flight of stairs, an individual with a mobility impairment seeking information about welfare benefits can be served in an accessible ground floor location or in another accessible building. Similarly, a town may move a public hearing from an inaccessible building to a building that is readily accessible. When choosing among available methods of providing program accessibility, a public entity must give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.

2. Q: If we opt to make structural changes in providing program accessibility, are we required to follow a particular design standard in making those changes?

A: Yes. When making structural changes to achieve program accessibility, a public entity must make those changes in accordance with the standards for new construction and alterations. See question No. 5.

3. Q: What is the time line for making structural changes?

A: Any structural changes that are required to achieve program accessibility must be made by January 26, 1995. Each public entity with 50 or more employees was required to complete a transition plan by July 26, 1992, setting forth the steps necessary to complete the changes.

4. Q: Are there any limitations on the program accessibility requirement?

A: Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

5. Q: What architectural design standard must we follow for new construction and alterations?

A: Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). ADAAG is the standard that must be used for privately-owned public accommodations and commercial facilities under title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain privately-owned buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

6. Q: Is the Federal Government planning to eliminate this choice and establish one design standard for new construction and alterations?

A: Yes. The Department of Justice is proposing to amend its current ADA Standards for Accessible Design (which incorporate ADAAG) to add sections dealing with judicial legislative, and regulatory facilities, detention and correctional facilities, residential housing, and public rights-of-way. The proposed amendment would apply these standards to new construction and alterations under title II. Under the proposed rule, the choice between ADAAG and UFAS would be eliminated.

7. Q: We want to make accessibility alterations to our city offices which are located in an historic building listed in the National Register of Historic Places. Are we prohibited from making changes? Which rules apply to us? What if these alterations would destroy the historic nature of the building?

A: Alterations to historic properties must comply with the specific provisions governing historic properties in ADAAG or UFAS, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be used. The decision to use alternative standards for that feature must be made in consultation with the appropriate historic advisory board designated in ADAAG or UFAS, and interested persons should be invited to participate in the decisionmaking process.

The alternative requirements for historic buildings or facilities provide a minimal level of access. For example—

(1) An accessible route is only required from one site access point (such as the parking lot).

(2) A ramp may be steeper than is ordinarily permitted.

(3) The accessible entrance does not need to be the one used by the general public.

(4) Only one accessible toilet is required and it may be unisex.

(5) Accessible routes are only required on the level of the accessible entrance.

8. Q: But what if complying with even these minimal alternative requirements will threaten or destroy the historic significance?

A: In such a case, which is rare, the public entity need not make the structural changes required by UFAS or ADAAG. If structural modifications that comply with UFAS or ADAAG cannot be undertaken, the Department's regulation requires that "program accessibility" be provided.

9. Q: Does a city have to provide curb ramps at every intersection on existing streets?

A: No. To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burden limitations may limit the number of curb ramps required.

To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.

However, when streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.

10. Q: Where a public library's open stacks are located on upper floors with no elevator access, does the library have to install a lift or an elevator?

A: No. As an alternative to installing a lift or elevator, library staff may retrieve books for patrons who use wheelchairs. Staff must be available to provide assistance during the operating hours of the library.

11. Q: Does a municipal performing arts center that provides inexpensive balcony seats and more expensive orchestra seats have to provide access to the balcony seats?

A: No. In lieu of providing accessible seating on the balcony level, the city can make a reasonable number of accessible orchestra-level seats available at the lower price of balcony seats.

12. Q: Is a city required to modify its policies whenever requested in order to accommodate individuals with disabilities?

A: No. A public entity must make only "reasonable modifications" in its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a modification would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district and, in order to install a ramp to the front entrance of a pharmacy, the owner requests a variance to encroach on the set-back by 3 feet, granting the variance may be a reasonable modification of town policy.

On the other hand, where an individual with an environmental illness requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its employees who come into contact with the public, adopting such a policy is not considered a "reasonable" modification of the public entity's personnel policy.

13. Q: Does the requirement for effective communication mean that a city has to put all of its documents in Braille?

A: Braille is not a "required" format for all documents. A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others.

A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. Examples

of auxiliary aids and services that benefit various individuals with vision impairments include magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or assistance in locating items.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, for individuals with vision impairments, employees can often provide oral directions or read written instructions. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, or large print materials.

14. Q: Must tax bills from public entities be available in Braille and/or large print? What about other documents?

A: Tax bills and other written communications provided by public entities are subject to the requirement for effective communication. Thus, where a public entity provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form that is usable by them. "Large print" versions of written documents may be produced on a copier with enlargement capacities. Brailled versions of documents produced by computers may be produced with a Braille printer, or audio tapes may be provided for individuals who are unable to read large print or do not use Braille. Brailled documents are not required if effective communication is provided by other means.

15. Q: Does a city have to arrange for a sign language interpreter every time staff members deal with people who are deaf or hard of hearing?

A: Sign language interpreters are not required for all dealings with people who are deaf or hard of hearing. A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.

Examples of auxiliary aids and services that benefit individuals with hearing impairments include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone hand set amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays and exchange of written notes.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, employees can often communicate with individuals who have hearing impairments through written materials and exchange of written notes. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

16. Q: Do all city departments have to have TDD's to communicate with people who have hearing or speech impairments?

A: No. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by title IV of the ADA, are available, these services generally may be used to meet this requirement.

Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where such services are

available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

However, State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access.

17. Q: Are there any limitations on a public entity's obligation to provide effective communication?

A: Yes. This obligation does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

18. Q: Is there any money available to help local governments comply with the ADA?

A: Yes. Funding available through the Community Development Block Grant program at the U.S. Department of Housing and Urban Development may be used for accessibility purposes, such as installation of ramps, curb cuts, wider doorways, wider parking spaces, and elevators. Units of local government that have specific questions concerning the use of CDBG funds for the removal of barriers should contact their local HUD Office of Community Planning and Development or call the Entitlement Communities Division at HUD, (202) 708-1577, for additional information.

Chairman ROTH. Thank you, Mr. Dart, for a very eloquent statement, and let me also congratulate you for the public service you have provided.

Ms. Donaldson, we now look forward to hearing from you.

TESTIMONY OF NANCY DONALDSON, LEGISLATIVE DIRECTOR, SERVICE EMPLOYEES INTERNATIONAL UNION

Ms. DONALDSON. My name is Nancy Donaldson. I am the Legislative Director of the Service Employees International Union. On behalf of the 1.1 million SEIU members who work in health care for the public sector and in building services, I would like to thank you for the opportunity to present our views on this important subject, unfunded mandates.

Let me also say that SEIU is working in coalition with over 200 groups and organizations who are equally concerned about the implications, some of them, of the unfunded mandates legislation before you. This coalition is quite broad, encompassing labor unions, consumer groups, civil rights organizations, environmentalists, and others who share in common a concern about preserving the power of democratic government to enact and implement protections desired by ordinary Americans.

We bring a unique perspective as a representative of public sector employees, because we, too, in many ways have felt the impacts of unfunded mandates on State and local entities. Our members, in some cases, have lost jobs and benefits because of the pressure in the budgets.

Nevertheless, it is our position that unfunded mandates are not inherently wrong and that, in fact, some mandates to Federal and State governments, in addition to the private sector, should not be funded by the Federal Government.

I want to emphasize that S. 1 will have a very real impact on real people like those that SEIU represents. SEIU members work in the service sector. Our nursing home workers and building service workers, mostly janitors, start bargaining at the minimum

wage. Today someone working full-time for minimum wage for a year earns only $8,840, which is $6,000 below the poverty line for a family of four.

We believe that a minimum wage increase is long overdue. But S. 1 would raise serious new barriers to a minimum wage increase. Any increase would clearly be a mandate and would impact State and local governments, and therefore it would become subject to this bill.

States and localities employ many low-wage workers. In fact, in 1985 when the Supreme Court in the *Garcia* decision extended the Fair Labor Standards Act to State and local governments, the Department of Labor estimated at that time that 260,000 public workers were earning less than the minimum wage, then $3.35 an hour.

S. 1 would require public employees to be compensated by the Federal Government for the costs of this increase.

A raise in the minimum wage would—that would be one option—or it would not be enforced in the public sector, but it would be enforced in the private sector. This would mean that the private employers would have to pay a higher minimum wage and that public employers would not.

We think that that also—that uneven application is not a good idea. We feel the same way about family and medical leave and many other important pieces of legislation that have previously passed and that are coming forward.

We urge you to consider exempting S. 1 from Federal standards that apply across the board.

Working Americans face serious hazards in the workplace. For example, health workers, which we represent about 400,000, are facing the resurgence of tuberculosis, which is sweeping through our Nation's health care, prison, and social service facilities. Every day, workers in these facilities are exposed to TB infection, and to date at least six have died as a result. OSHA has put a promulgation of a TB exposure standard on a fast track in order to cope with this public health emergency.

When I say "public," a lot of the problems are actually happening in public hospitals.

However under S. 1, the publication of even a proposed rule would be delayed indefinitely as OSHA is forced to conduct these behind-the-scenes consultations with State and local governments.

Already, as you well know, OSHA and other agency standards are subject to a long process of public review and comment. By dragging out this phase of consultation, public employers are at the very least able to delay, if not stop, important standards.

We strongly object and have serious concerns about public employers having special privileges and access and the concerns of workers not being considered similarly.

We also would like to raise one additional concern. I was here and I heard Senator Kempthorne testify, I believe in response to your question, that the legislation, as defined, does not apply to existing mandates.

I would just like to raise a concern that the definitions, as we understand them, would actually allow the application to existing mandates if they are not currently authorized, if they have come out of authorization, or if by design or lack of design they became

unauthorized in the process before the new reauthorization happened. We are very concerned about the mischief that can be played with this.

SEIU urges the Committee to weigh carefully the far-reaching implications of S. 1 and to give thorough consideration to the amendments we have suggested. Without these amendments, the legislation will serve only to increase the frustration of ordinary citizens with the ineffectiveness of a Federal Government so tied in knots by incomprehensible procedures that it cannot enact the simplest protective measures that they demand.

Thank you very much.

[The prepared statement of Ms. Donaldson follows:]

PREPARED STATEMENT OF MS. DONALDSON

My name is Nancy Donaldson and I am the Director of Legislation for the Service Employees International Union. On behalf of SEIU's 1.1 million members who work in health care, the public sector and building services, I would like to thank Chairmen of both Committees for this opportunity to present our views on an issue of profound importance: unfunded mandates. As taxpayers and citizens, we are concerned about the ability of government to deliver the services and protections that our families need.

Let me also point out that SEIU is working in coalition with more than 200 other organizations who are equally concerned about the implications of unfunded mandates legislation like S. 1. This coalition is quite broad, encompassing labor unions, consumer groups, civil rights organizations, environmentalists, and others, who share a common concern about preserving the power of democratic government to enact and implement protections desired by ordinary Americans.

States, counties and municipalities are caught in an ever-tightening fiscal vise. This is a very real problem and one which the Federal Government itself has exacerbated. For the past 20 years, as demands on them have grown, the share of State and local governments' resources supplied by the Federal Government has declined markedly.

Failure to control health care costs exacerbates the problem: Whereas in 1980, health care accounted for only 17 percent of the Federal grants-in-aid dollar, today it eats up over 41 percent, leaving less for other needs. Of course, I need remind no one that comprehensive health care reform, which would have gone a long way towards restoring balance to intergovernmental finances, failed in the last Congress.

Unfortunately, instead of tackling the resource problem head-on, a phony solution is gaining support. This approach, known as "unfunded mandate reform" does nothing to address directly the fiscal difficulties of States and localities. In fact, it is being advocated by many of the same people who argue for across-the-board cuts in discretionary spending, including grants-in-aid to the States.

If legislation like S. 1 becomes law, then States and localities could refuse to comply with Federal laws that did not include funds to reimburse them for the cost of obeying the law. The law would be enforceable only to the extent that funds were appropriated for the intergovernmental mandate. This would make government unworkable as the implementation of Federal programs would be held hostage to the annual appropriations process.

Make no mistake about it, advocates of S. 1 and similar legislation intend to sabotage enactment of any law or regulation that benefits working Americans. For example, had S. 1 been in effect, then passage of the Family and Medical Leave Act and the Americans with Disabilities Act, among others, would have been made much more difficult, if not impossible.

Let me review two pressing Federal actions which are very high priorities for the workers SEIU represents and which would be adversely affected by S. 1.

S. 1 Would Hurt the Poorest Workers

S. 1 would hurt the poorest workers by making it more difficult to secure a long overdue increase in the Federal minimum wage. Today, the minimum wage buys only 65 percent of what it did 10 years ago. Someone working full time for a year would earn only $8,840, about $6,000 below the poverty line for a family of four.

Any increase in the minimum wage would impact State and local government and would therefore be considered an intergovernmental mandate. States and localities employ many low-wage workers. In 1985, when the *Garcia* decision extended the

Fair Labor Standards Act to the State and local governments, the Department of Labor estimated that 260,000 public workers were earning less than the minimum wage, then $3.35 per hour.

S. 1 would require that public employers be compensated by the Federal Government for the cost of this increase. Depending on how the various provisions are worded and interpreted, the current minimum wage as well as a future increase could be subject to challenge.

Another possibility is that the higher minimum wage would not be enforced in the public sector. This would mean that private employers would have to pay the higher minimum wage but public employers would not. SEIU believes that labor standards should apply consistently in the public and private sectors.

S. 1 Would Cost Lives By Slowing Worker Protection Regulations

The resurgence of tuberculosis (TB) has swept through our Nation's health care, prison and social service facilities. Every day, workers in these facilities are exposed to TB infection. They risk death from exposure to multi-drug-resistant TB (MDR–TB). To date, at least six workers have died from occupational exposure to TB.

Seventeen cases of workplace transmission of MDR–TB have been documented and there have been over 100 cases of occupational infection with TB strains resistant to at least one drug. According to the National Institute of Occupational Safety and Health (NIOSH), these figures greatly understate the real state of affairs.

Recently, the Centers for Disease Control updated their recommendations to control worker TB infection. However, because CDC recommendations do not have the force of law, many employers ignore them. The Occupational Safety and Health Administration has put promulgation of a TB Exposure Standard on a fast track in order to cope with this public health emergency.

Many of the facilities that would be affected by the OSHA standard are in the public sector. It is in the public hospitals and prison systems where the TB resurgence is raging. A recent study reported that 31 percent of workers in the emergency department at the Harbor-UCLA Medical Center tested positive for TB after they started working there.

Under S. 1, however, the publication of even a proposed rule would be delayed indefinitely as OSHA is forced to conduct behind-the-scenes consultations with State and local governments. Already, OSHA standards are subject to a long process of public comment and review. By dragging out this new phase of consultation, public employers at the very least could delay still further promulgation of a final standard. Other provisions of S. 1 unnecessarily add to the analyses already required of regulatory agencies like OSHA. In the meantime, more workers would become infected with TB through exposure on the job.

To the extent that the concerns of these public employers modify the proposed rule, public employers will have secured a privileged role in the rulemaking process. The concerns of employers will have priority over the concerns of workers. This, ultimately, is the goal of the proponents of unfunded mandate reform—to stall the machinery of government when it acts to protect working people. S. 1 will shift the balance of power in favor of employers, public and private, and against the interests of employees.

S. 1 Is Too Broad

S. 1 is a scattershot approach that will create more problems than it claims to solve. Those instances where Federal policy imposes unjustified costs on States should be carefully deliberated and reforms undertaken where necessary. However, the overly broad approach of S. 1 amounts to throwing out the baby with the bath water. Nearly every piece of Federal legislation can be defined as a mandate under the proposed bill. Several exemptions are needed to remedy this.

The first exemption would protect the rights of public-sector workers. Public employees have fought long and hard to secure the same workplace protections that private sector workers enjoy. This struggle is not yet over—State and local workers in about half of the States are not protected by the Occupational Safety and Health Act. How ironic that even as Congress deliberates legislation that would extend private sector workplace protections to Congressional employees, it is also considering S. 1 which aims to strip State and local employees of these same protections. S. 1 should exempt laws related to the health and safety of workers or which establish or enforce rights of employees vis-a-vis their employer.

The second exemption is needed to guarantee fair and equal treatment for the private and public sectors. S. 1 will create many imbalances between the obligations imposed on the public and private sector. S. 1 should be amended to make clear that it does not cover any mandate that falls also on the private sector. State and local

governments should not be compensated merely for complying with laws and regulations that private individuals and businesses must obey.

A third exemption is needed to ensure that the proposed bill does not undermine public health. Protection of public health has long been recognized as a basic function of government. Furthermore, because public health measures result in reductions in injury, illness and death, their benefits cannot easily be quantified in economic terms. Therefore, it is impossible to balance fairly the costs and benefits of public health measures. Therefore, S. 1 should be amended to exclude all measures that improve and protect the public health.

S. 1's Definition of A Mandate Must Be Clarified

Our next concern relates to the lack of agreement about what a mandate is. Passage of this legislation without clarification of the many thorny issues involved in defining a "mandate" will only result in endless confusion and lawsuits.

In the case of a minimum wage increase, would the cost of the unfunded intergovernmental mandate include only the amount of the increase or the entire amount of the new minimum wage? The legislation needs to state clearly that the costs associated with requirements already in effect are not included.

Language must be added to the bill stating clearly that reauthorizations of existing statutes are not subject to the act's requirements. Unless this is done, a large number of critical Federal statutes will be in jeopardy. We find it inconceivable that proponents of S. 1 intend to place in jeopardy existing laws including those that protect children from lead poisoning, regulate child labor, protect clean air and drinking water, protect consumers and set a Federal minimum wage, to list only a few.

S. 1 Ignores Benefits of Federal Laws

In defining the cost of an unfunded mandate, S. 1 does not include the value of the benefits of the proposed mandate. A drinking water standard, for example, may lead to a reduction of mortality and morbidity that saves lives and reduces medical costs. Looking only at the cost side of equation ignores the only reason government has for existing: to produce benefits for citizens.

The proposed legislation also ignores the direct economic benefits enjoyed by governments and the private sector from Federal spending and activity. Federal resources, including land, are often provided to businesses and governments at rates below full market value. Furthermore, both governments and the private sector benefit from tax expenditures under existing law. Any unfunded mandates legislation should take these benefits into account when estimating the overall burden of Federal mandates.

S. 1 Creates Unequal Access to the Rulemaking Process

SEIU objects strongly to those provisions of S. 1 which give a privileged status to certain parties in the rulemaking process. This bias is evident throughout the proposed legislation which consistently emphasizes the need for more input from those in the private or public sector who will pay the potential costs of any mandate. Completely ignored are the people who bear the costs imposed by the absence of particular Federal protection: workers, consumers, and communities.

There is no reason why working people and their representatives as well as groups that serve the public interest should not have access and participation that is equal to that proposed for governments and employers. For example, if governments have an opportunity to comment on proposed regulations prior to publication, then so too should the public.

Congressional Budget Office (CBO) Analyses May Create Log Jams

SEIU is concerned that S. 1's requirements for CBO analyses may be used to create legislative log jams. The proposed legislation greatly enhances the role of the CBO in the legislative process. While additional input from CBO can enhance legislative decisionmaking, it can also be used to delay needed legislation. During last year's health care debate, it became clear that CBO's inability to respond in a timely fashion to requests for analyses of reform bills helped to bog down the legislative process.

The analysis of Federal mandates, especially in view of the lack of consensus regarding methodology for estimation, will be no less complex and time-consuming than the analysis of health care legislation was. Therefore, the bill should include strict time limits for CBO to complete its analysis. If those time limits are not met, then the other requirements of the legislation would be waived. Similarly, the legislation should not apply during any year in which appropriations for CBO are inadequate to accomplish its new responsibilities.

SEIU urges the Committees to weigh carefully the far-reaching implications of S. 1 and to give thorough consideration to the amendments we have suggested. With-

out these amendments, this legislation will serve only to increase the frustration of ordinary citizens with the ineffectiveness of a Federal Government so tied in knots by incomprehensible procedures that it cannot enact the simplest protective measures they demand.

Chairman ROTH. Well, thank you, Ms. Donaldson.

Going back to your testimony, Mr. Dart, there is a broad exclusion to S. 1, which, of course, I take it you are satisfied with?

Mr. DART. We commend you on that, Mr. Chairman, and all of your colleagues.

Chairman ROTH. Senator Exon, did you want to ask anything?

Senator EXON. I have no questions of this panel, Mr. Chairman. I am sorry that I was called away. This was a very important hearing. I am glad you held it. I will be here as long as I can. But I have no questions for this panel. I will read their testimony.

Chairman ROTH. Well, thank you very much for being here today. And again, thank you for your patience.

The Committee is in recess subject to the call of the Chairman.

[Whereupon, at 1:09 p.m., the Committee was recessed, subject to the call of the Chair.]

APPENDIX

104TH CONGRESS
1ST SESSION

S. 1

To curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. KEMPTHORNE (for himself, Mr. DOLE, Mr. GLENN, Mr. ROTH, Mr. DOMENICI, Mr. EXON, Mr. COVERDELL, Mr. BROWN, Mr. BURNS, Mr. CRAIG, Mr. FAIRCLOTH, Mr. GREGG, Mr. BENNETT, Mrs. HUTCHISON, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BOND, Mr. BREAUX, Mr. CAMPBELL, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. D'AMATO, Mr. DEWINE, Mr. FRIST, Mr. GORTON, Mr. GRAMM, Mr. GRAMS, Mr. HATCH, Mr. HATFIELD, Mr. HEFLIN, Mr. HELMS, Mr. INHOFE, Mrs. KASSEBAUM, Mr. KYL, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCONNELL, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mr. NICKLES, Mr. PACKWOOD, Mr. PRESSLER, Mr. ROBB, Mr. SANTORUM, Mr. SHELBY, Mr. SIMPSON, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND, and Mr. WARNER) introduced the following bill; which was read twice and referred jointly pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged

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A BILL

To curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the part-

nership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unfunded Mandate Reform Act of 1995".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and States, local governments, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on States, local governments, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting States, local governments, tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal mandates; and

(7) to assist Federal agencies in their consideration of proposed regulations affecting States, local governments, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of States, local governments, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider better estimates of the budgetary impact of regulations containing Federal mandates upon States, local governments, and tribal governments before adopting such regulations, and ensuring that small governments are given special consideration in that process.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—For purposes of this Act—

(1) the terms defined under paragraphs (11) through (21) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 (as

added by subsection (b) of this section) shall have the meanings as so defined; and

(2) the term "Director" means the Director of the Congressional Budget Office.

(b) CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.—Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new paragraphs:

"(11) The term 'Federal intergovernmental mandate' means—

"(A) any provision in legislation, statute, or regulation that—

"(i) would impose an enforceable duty upon States, local governments, or tribal governments, except—

"(I) a condition of Federal assistance or

"(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

"(ii) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that would

be provided to States, local governments, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

"(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to States, local governments, and tribal governments under entitlement authority, if the provision—

"(i)(I) would increase the stringency of conditions of assistance to States, local governments, or tribal governments under the program; or

"(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to States, local governments, or tribal governments under the program; and

"(ii) the States, local governments, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue pro-

viding required services that are affected by the legislation, statute or regulation.

"(12) The term 'Federal private sector mandate' means any provision in legislation, statute, or regulation that—

"(A) would impose an enforceable duty upon the private sector except—

"(i) a condition of Federal assistance; or

"(ii) a duty arising from participation in a voluntary Federal program; or

"(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

"(13) The term 'Federal mandate' means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (11) and (12).

"(14) The terms 'Federal mandate direct costs' and 'direct costs'—

"(A)(i) in the case of a Federal intergovernmental mandate, mean the aggregate estimated amounts that all States, local govern-

ments, and tribal governments would be required to spend in order to comply with the Federal intergovernmental mandate; or

"(ii) in the case of a provision referred to in paragraph (11)(A)(ii), mean the amount of Federal financial assistance eliminated or reduced.

"(B) in the case of a Federal private sector mandate, mean the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

"(C) shall not include—

"(i) estimated amounts that the States, local governments, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

"(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity

as is affected by that Federal mandate; or

"(II) to comply with or carry out State, local governmental, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

"(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the States, local governments, and tribal governments, or by the private sector, as a result of—

"(I) compliance with the Federal mandate; or

"(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate; and

"(D) shall be determined on the assumption that State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations. Reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees.

"(15) The term 'amount' means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

"(16) The term 'private sector' means individuals, partnerships, associations, corporations, business trusts, or legal representatives, organized groups of individuals, and educational and other nonprofit institutions.

"(17) The term 'local government' has the same meaning as in section 6501(6) of title 31, United States Code.

"(18) The term 'tribal government' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village

or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (83 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

"(19) The term 'small government' means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

"(20) The term 'State' has the same meaning as in section 6501(9) of title 31, United State Code."

"(21) The term 'agency' has the meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies, as defined in section 3502(10) of title 44, United States Code.

"(22) The term 'regulation' or 'rule' has the meaning of 'rule' as defined in section 601(2) of title 5, United States Code.".

SEC. 4. EXCLUSIONS.

The provisions of this Act and the amendments made by this Act shall not apply to any provision in a bill or

joint resolution before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the United States Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations; or

(6) the President designates as emergency legislation and that the Congress so designates in statute.

SEC. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director of the Congressional Budget Office such information and assistance

as the Director may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new section:

"SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

"(a) DUTIES OF CONGRESSIONAL COMMITTEES.—

"(1) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by paragraphs (3) and (4).

"(2) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional

Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

"(3) REPORTS ON FEDERAL MANDATES.—Each report described under paragraph (1) shall contain—

"(A) an identification and description of any Federal mandates in the bill or joint resolution, including the expected direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

"(B) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

"(C) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs would affect the competitive balance between State, local, or tribal governments and privately owned businesses.

"(4) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolu-

tion are Federal intergovernmental mandates, the report required under paragraph (1) shall also contain—

"(A)(i) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of State, local, or tribal governments subject to the Federal intergovernmental mandates; and

"(ii) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

"(B) any existing sources of Federal assistance in addition to those identified in subparagraph (A) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

"(5) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the com-

mittee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution preempts any State, local, or tribal law, and, if so, an explanation of the reasons for such preemption.

"(6) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

"(A) Upon receiving a statement (including any supplemental statement) from the Director under subsection (b)(1), a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

"(B) If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

"(b) DUTIES OF THE DIRECTOR.—

"(1) STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.—

"(A) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(i) If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(ii) The estimate required under clause (i) shall include estimates (and brief explanations of the basis of the estimates) of—

"(I) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution; and

"(II) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

"(B) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committees of authorization of the Senate or the House of Representatives, the Director of the Congres-

sional Budget Office shall prepare and submit to the committee a statement as follows:

"(i) If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $200,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(ii) Estimates required under this subparagraph shall include estimates (and a brief explanation of the basis of the estimates) of—

"(I) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

"(II) the amount, if any, of increase in authorization of appropriations under existing Federal financial

assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

"(iii) If the Director determines that it is not feasible to make a reasonable estimate that would be required under clauses (i) and (ii), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

"(C) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in paragraphs (A) and (B), the Director shall so state and shall briefly explain the basis of the estimate.

"(c) LEGISLATION SUBJECT TO POINT OF ORDER IN THE SENATE.—

"(1) IN GENERAL.—It shall not be in order in the Senate to consider—

"(A) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with subsection (a)(6) before such consideration; and

"(B) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in subsection (b)(1)(A)(i) to be exceeded, unless—

"(i) the bill, joint resolution, amendment, motion, or conference report provides direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount that is equal to the estimated direct costs of such mandate;

"(ii) the bill, joint resolution, amendment, motion, or conference report pro-

vides an increase in receipts and an increase in direct spending authority for each fiscal year for the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to the estimated direct costs of such mandate; or

"(iii) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to the estimated direct costs of such mandate, and—

"(I) identifies a specific dollar amount estimate of the full direct costs of the mandate for each year or other period during which the mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under paragraph (3) for each fiscal year;

"(II) identifies any appropriation bill that is expected to provide for

Federal funding of the direct cost referred to under subclause (IV)(aa);

"(III) identifies the minimum amount that must be appropriated in each appropriations bill referred to in subclause (II), in order to provide for full Federal funding of the direct costs referred to in subclause (I); and

"(IV)(aa) designates a responsible Federal agency and establishes criteria and procedures under which such agency shall implement less costly programmatic and financial responsibilities of State, local, and tribal governments in meeting the objectives of the mandate, to the extent that an appropriation Act does not provide for the estimated direct costs of such mandate as set forth under subclause (III); or

"(bb) designates a responsible Federal agency and establishes criteria and procedures to direct that, if an appropriation Act does not provide for the estimated direct costs of such

mandate as set forth under subclause (III), such agency shall declare such mandate to be ineffective as of October 1 of the fiscal year for which the appropriation is not at least equal to the direct costs of the mandate.

"(2) RULE OF CONSTRUCTION.—The provisions of paragraph (1)(B)(iii)(IV)(aa) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

"(3) COMMITTEE ON APPROPRIATIONS.—Paragraph (1) shall not apply to matters that are within the jurisdiction of the Committee on Appropriations of the Senate or the House of Representatives.

"(4) DETERMINATION OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this subsection, on questions regarding the applicability of this Act to a pending bill, joint resolution, amendment, motion, or conference report, the Committee

on Governmental Affairs of the Senate, or the Committee on Government Reform and Oversight of the House of Representatives, as applicable, shall have the authority to make the final determination.

"(5) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For the purposes of this subsection, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget of the Senate or the House of Representatives, as the case may be.

"(d) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of subsection (c) to a bill or joint resolution reported by a committee of authorization.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 407 the following new item:

"Sec. 408. Legislative mandate accountability and reform.".

SEC. 102. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

(a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE WHOLE.—Clause 5 of rule XXIII of the Rules of the

House of Representatives is amended by adding at the end the following:

"(c) In the consideration of any measure for amendment in the Committee of the Whole containing any Federal mandate the direct costs of which exceed the threshold in section 408(c) of the Unfunded Mandate Reform Act of 1995, it shall always be in order, unless specifically waived by terms of a rule governing consideration of that measure, to move to strike such Federal mandate from the portion of the bill then open to amendment.".

(b) COMMITTEE ON RULES REPORTS ON WAIVED POINTS OF ORDER.—The Committee on Rules shall include in the report required by clause 1(d) of rule XI (relating to its activities during the Congress) of the Rules of the House of Representatives a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and the subject matter of that measure.

SEC. 103. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

"(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

"(A) a significant budgetary impact on State, local, or tribal governments; or

"(B) a significant financial impact on the private sector.";

(B) by amending subsection (h) to read as follows:

"(h) STUDIES.—

"(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

"(2) FEDERAL MANDATE STUDIES.—

"(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable,

conduct a study of a Federal mandate legislative proposal.

"(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

"(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

"(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

"(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

"(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or

extend beyond the 5-year period after the mandate is first effective; and

"(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

"(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

"(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

"(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

"(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services."; and

(2) in section 301(d) by adding at the end thereof the following new sentence: "Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending, or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.".

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal

years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this Act.

SEC. 105. EXERCISE OF RULEMAKING POWERS.

The provisions of sections 101, 102, 103, 104, and 107 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

SEC. 106. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

(a) IN GENERAL.—Section 403 of the Congressional Budget Act of 1974 (2 U.S.C. 653) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking out the item relating to section 403.

SEC. 107. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 and shall apply only to legislation introduced on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law—

(1) assess the effects of Federal regulations on State, local, and tribal governments (other than to the extent that such regulations incorporate requirements specifically set forth in legislation), and the private sector including specifically the availability of resources to carry out any Federal intergovernmental mandates in those regulations; and

(2) seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving statutory and regulatory objectives.

(b) STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officials (or their designated representatives) of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing sig-

nificant Federal intergovernmental mandates. Such a process shall be consistent with all applicable laws.

(c) AGENCY PLAN.—

(1) EFFECTS ON STATE, LOCAL AND TRIBAL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(A) provide notice of the contemplated requirements to potentially affected small governments, if any;

(B) enable officials of affected small governments to provide input under subsection (b); and

(C) inform, educate, and advise small governments on compliance with the requirements.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to each agency to carry out the provisions of this section, and for no other purpose, such sums as are necessary.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Before promulgating any final rule that includes any Federal intergovernmental mandate

that may result in the expenditure by State, local, or tribal governments, and the private sector, in the aggregate, of $100,000,000 or more (adjusted annually for inflation by the Consumer Price Index) in any 1 year, and before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any such rule, the agency shall prepare a written statement containing—

(1) estimates by the agency, including the underlying analysis, of the anticipated costs to State, local, and tribal governments and the private sector of complying with the Federal intergovernmental mandate, and of the extent to which such costs may be paid with funds provided by the Federal Government or otherwise paid through Federal financial assistance;

(2) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future costs of the Federal intergovernmental mandate; and

(B) any disproportionate budgetary effects of the Federal intergovernmental mandate upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities;

(3) a qualitative, and if possible, a quantitative assessment of costs and benefits anticipated from the Federal intergovernmental mandate (such as the enhancement of health and safety and the protection of the natural environment);

(4) the effect of the Federal private sector mandate on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (or their designated representatives) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency;

(C) a summary of the agency's evaluation of those comments and concerns; and

(D) the agency's position supporting the need to issue the regulation containing the Federal intergovernmental mandates (considering, among other things, the extent to which costs may or may not be paid with funds provided by the Federal Government).

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) PROGRAM FOCUS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

TITLE III—REVIEW OF UNFUNDED FEDERAL MANDATES

SEC. 301. ESTABLISHMENT.

There is established a commission which shall be known as the "Commission on Unfunded Federal Mandates" (in this title referred to as the "Commission").

SEC. 302. REPORT ON UNFUNDED FEDERAL MANDATES BY THE COMMISSION.

(a) IN GENERAL.—The Commission shall in accordance with this section—

(1) investigate and review the role of unfunded Federal mandates in intergovernmental relations and

their impact on local, State, and Federal government objectives and responsibilities; and

(2) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for States, local, and tribal governments in complying with specific unfunded Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more unfunded Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating unfunded Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, unfunded Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of States, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying unfunded Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by

States, local, and tribal governments with those mandates; and

(F) establishing common Federal definitions or standards to be used by States, local, and tribal governments in complying with unfunded Federal mandates that use different definitions or standards for the same terms or principles.

(3) IDENTIFICATION OF RELEVANT UNFUNDED FEDERAL MANDATES.—Each recommendation under paragraph (2) shall, to the extent practicable, identify the specific unfunded Federal mandates to which the recommendation applies.

(b) CRITERIA.—

(1) IN GENERAL.—The Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA.—The Commission shall issue proposed criteria under this subsection not later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) FINAL CRITERIA.—Not later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(c) PRELIMINARY REPORT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this subtitle, including preliminary recommendations pursuant to subsection (a);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(d) FINAL REPORT.—Not later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the President a final report on the findings, conclusions, and recommendations of the Commission under this section.

SEC. 303. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) IN GENERAL.—The Commission shall be composed of 9 members appointed from individuals who possess extensive leadership experience in and knowledge of States, local, and tribal governments and intergovernmental relations, including State and local elected officials, as follows:

(A) 3 members appointed by the Speaker of the House of Representatives, in consultation with the minority leader of the House of Representatives.

(B) 3 members appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate.

(C) 3 members appointed by the President.

(2) LIMITATION.—An individual who is a Member or employee of the Congress may not be appointed or serve as a member of the Commission.

(b) WAIVER OF LIMITATION ON EXECUTIVE SCHEDULE POSITIONS.—Appointments may be made under this section without regard to section 5311(b) of title 5, United States Code.

(c) TERMS.—

(1) IN GENERAL.—Each member of the Commission shall be appointed for the life of the Commission

(2) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) BASIC PAY.—

(1) RATES OF PAY.—Members of the Commission shall serve without pay.

(2) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Commission who are full-time officers or employees of the United States may not receive additional pay, allowances, or

benefits by reason of their service on the Commission.

(e) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(f) CHAIRPERSON.—The President shall designate a member of the Commission as Chairperson at the time of the appointment of that member.

(g) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall meet at the call of the Chairperson or a majority of its members.

(2) FIRST MEETING.—The Commission shall convene its first meeting by not later than 45 days after the date of the completion of appointment of the members of the Commission.

(3) QUORUM.—A majority of members of the Commission shall constitute a quorum but a lesser number may hold hearings.

SEC. 304. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Commis-

sion. The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule.

(b) STAFF.—With the approval of the Commission, and without regard to section 5311(b) of title 5, United States Code, the Director may appoint and fix the pay of such staff as is sufficient to enable the Commission to carry out its duties.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate payable under section 5376 of title 5, United States Code.

(d) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Director, the head of any Federal department or agency may detail, on a reimbursable basis, any of the

personnel of that department or agency to the Commission to assist it in carrying out its duties under this title.

SEC. 305. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title, except information—

(1) which is specifically exempted from disclosure by law; or

(2) which that department or agency determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to trade secrets or financial or commercial information pertaining

specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services nec-

essary for the Commission to carry out its duties under this title.

(f) CONTRACT AUTHORITY.—The Commission may, subject to appropriations, contract with and compensate government and private agencies or persons for property and services used to carry out its duties under this title.

SEC. 306. TERMINATION.

The Commission shall terminate 90 days after submitting its final report pursuant to section 302(d).

SEC. 307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission $1,000,000 to carry out this title.

SEC. 308. DEFINITION.

As used in this title, the term "unfunded Federal mandate" means—

(1) any provision in statute or regulation that imposes an enforceable duty upon States, local governments, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program;

(2) relates to a Federal program under which Federal financial assistance is provided to States, local governments, or tribal governments under entitlement authority; or

(3) that imposes any other unfunded obligation on States, local governments, or tribal governments.

SEC. 309. EFFECTIVE DATE.

This title shall take effect 60 days after the date of the enactment of this Act.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) IN GENERAL.—Any statement or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review.

(b) RULE OF CONSTRUCTION.—No provision of this Act or amendment made by this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action. No ruling or determination made under the provisions of this Act or amendments made by this Act shall be considered by any court in determining the intent of Congress or for any other purpose.

PREPARED STATEMENT OF SENATOR COCHRAN

Mr. Chairman, this legislation forces the Federal Government to consider more carefully the economic consequences of its regulatory actions. I remember as a new member of the other body, we passed legislation to require elementary and secondary schools to provide educational opportunities for all children, irrespective of their physical or mental state or capacity. The law directed them to do certain things, and I recall the local school boards and local governments calling and writing and saying this is going to cost enormous sums of money; what is the matching requirement and what will be the Federal contributions to help us do this. The answer was there was no Federal money provided.

I tried to get the legislation amended to authorize Federal funds to provide needed financial assistance to those especially poor school districts who would have a very hard time meeting their obligations under these new burdens. I agreed the legislation was a good idea and the school districts should meet the needs of all children, but the funding was a problem, and it still is.

I recall also in those days in the House the new requirements on local communities to do something about waste water treatment and to build facilities. It was a big issue then and it still is today. The Federal Government refuses to acknowledge its responsibility to have flexibility that may be less expensive than those that are state-of-the-art and the most expensive.

I am hoping that this new initiative will require this new flexibility, and responsibility to help pay the costs in certain situations. I am happy to be a cosponsor of Senator Kempthorne's legislation, and I urge that it be reported favorably in the Senate.

PREPARED STATEMENT OF HON. RICK MYSTROM, MAYOR MUNICIPALITY OF ANCHORAGE, ALASKA

The Municipality of Anchorage applauds the Congress in its efforts to finally stop the flood of unfunded Federal mandates. For too many years, the Federal Government, in the name of achieving various public purposes, has imposed enormous regulatory burdens upon States and local governments without providing for or even considering the high costs of compliance. In some cases these costs far outweigh the benefits of the programs themselves. This unfair and irresponsible approach to governing has to stop. If the Federal Government is either unable or unwilling to bear the costs of the programs and requirements it elects to adopt, then it must leave the decision of whether and how to pay the costs of compliance in the hands of the affected State and local governments. For these reasons I urge the Committees and the Senate as a whole to enact S. 1, the Unfunded Mandate Reform Act of 1995.

At the same time, I believe the bill can and should be amended so that it will more completely achieve its objectives. First, the bill should be modified so as to hold Federal agencies to a more exacting standard when they estimate the costs to affected governments of their regulations and rules. Agencies often underestimate the financial impacts of their programs. When they make these mistakes, it is the local communities that pay the price. The provisions of S. 1 should be amended to require greater accuracy in these estimates. Moreover, the bill should include extraordinary relief for local governments when actual regulatory costs far exceed Federal agency estimates.

A second area for improvement concerns the dollar thresholds at which various requirements of the bill are triggered. Currently, the bill's provisions focus on whether a Federal mandate or regulation would involve total direct costs above a certain level. This creates the possibility of a mandate, which has a disproportionate cost impact on one State or local government, avoiding the bill's requirements simply because the total costs are below the threshold amount. This is a concern that its especially significant to those of us in Alaska. The unique conditions in our State often give rise to costs which are greater then those faced in the lower 48. Construction costs, which are heavily influenced by climate and geography, are a prime example of this fact. An unfunded Federal mandate which imposes substantial costs on only one or a few communities is no less unfair or irresponsible than one which affect the whole country. Some modification should be made to close this unintended loophole.

Finally, the Congress must recognize that while this legislation provides welcome relief from future unfunded mandates, it does not address the numerous current and pending mandates which have brought many small governments to financial crisis. We and other cash-strapped municipalities are faced with significant compliance costs in the near term, at a time when our economic resources are already

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stretched to their limit. We strongly encourage the Congress to adopt a moratorium on the implementation of existing mandates until they can be subjected to the same fiscal impact analysis which would be required for future mandates.

Thank you for the opportunity to provide this testimony. I would be happy to provide any additional information which might be useful to the Committees.

LETTER FROM OPPOSE "NO MONEY, NO MANDATES" LEGISLATION

January 5, 1995

DEAR SENATOR: The following 93 organizations—representing the civil rights, disabilities, environmental, educational, health, labor, religious, social welfare and other public interest communities—oppose legislation containing "no money, no mandates" provisions.

We recognize the budget constraints State and local governments face and believe the problems should be directly addressed. Instead of dealing with the need for additional, flexible funding, the current debate about unfunded Federal mandates is being shaped by an attack on Federal protections and safeguards.

"No money, no mandates" means that if a State or local government is not given funding for the Federal mandate, then it would not need to comply. Given current Federal budget limits and a push to make significant cuts in order to balance the U.S. budget, this initiative will not result in any additional results for governors and mayors. Rather, it will result in undermining the laws designed to protect the health, safety, civil liberties and rights of all Americans.

Making implementation of Federal protections contingent on each year's funding cycle turns long-term policy objectives into a question of winning and losing annual appropriations battles. Ultimately, powerful special interests will be protected, leaving the rest of the country vulnerable.

"No money, no mandates" creates confusion and unfair application of Federal laws. For example, State and local governments would only follow Federal laws, such as minimum wage or pollution laws, if the Federal Government pays them to comply. The private sector, on the other hand, would still be required to follow the Federal laws, regardless of whether the Federal Government pays them or not. Will the private sector also demand payment for compliance?

"No money, no mandates" will limit Congressional ability to respond to future public concerns and crises. New mandates will likely come at the expense of current mandates because of existing spending caps and "pay-as-you-go" budget requirements.

Congress has not undertaken a thorough examination of the fiscal responsibilities of Federal, State, and local govenrments. To find real, responsible, lasting solutions, this complex subject requires more study. Congress should undertake such study and delay action on proposed unfunded manadates legislation.

We strongly oppose legislation that contains "no money, no mandates" provisions and urge you to oppose such legislation also.

Sincerely,

20/20 Vision
AFL–CIO
AIDS Action Council
Alliance for Justice
American Association on Mental Retardation
American Association of University Affiliated Programs
American Association of University Professors
American Association of University Women
American Civil Liberties Union
American Federation of State, County and Municipal Employees
American Friends Service Committee
American Oceans Campaign
Americans for Democratic Action
Atlantic States Legal Foundation
Center for Advancement of Public Policy
Center for Community Change
Center for Marine Conservation
Children's Defense Fund
Citizen Action
Clean Water Action
Common Agenda
Community Nutrition Institute
Consumer Action
Consumer Federation of America
Council for Exceptional Children
Environmental Defense Center
Families USA
Family Service America
Friends of the Earth
Great Lakes United
Hadassah
David Hobbins Engineers
Izaak Walton League of America
International Association of Psychosocial Rehabilitation Systems
International Brotherhood of Teamsters

International Ladies' Garment Workers' Union
Justice Coordinating Team, Sisters of Mercy of the Americas
Lake Michigan Federation
Long Island Sound Keeper
Mississippi River Basin Alliance
NAACP
National Association of Protection and Advocacy Services
National Association of School Psychologists
National Association of Social Workers
National Audubon Society
National Coalition for the Homeless
National Council of Jewish Women
National Council on Family Relations
National Education Association
National Family Farm Coalition
National Head Injury Foundation
National Law Center on Homelessness and Poverty
National Low Income Housing Coalition
National Parent Network on Disabilities
National Recreation and Park Association
National Wildlife Federation
Natural Resources Defense Council
NETWORK, A National Catholic Social Justice Lobby
Network for Environmental and Economic Responsibility
New Jersey Audubon Society
New York Rivers United
North Carolina Coastal Foundation
Pacific Rivers Council
People for Puget Sound
Physicians for Social Responsibility
Protect Biodiversity in Public Forests
Public Citizen
Public Employee Department, AFL–CIO
Public Voice for Food & Health Policy
Rails-to-Trails Conservancy
River Network
Service Employees International Union, AFL–CIO, CLC
Sierra Club Legal Defense Fund
Soundkeeper
Surface Transportation Policy Project
Trout Unlimited
The Arc (formerly The Association for Retarded Citizens)
Union of American Hebrew Congregations
Union of Concerned Scientists
United Auto Workers
United Brotherhood of Carpenters and Joiners of America
United Cerebral Palsy Association
United Church of Christ
United Food and Commercial Workers International Union
United Mine Workers
United Steelworkers of America
U.S. PIRG
Widener University School of Law
Women of Reform Judaism, The Federation of Temple Sisterhoods
Women's Legal Defense Fund
Women's National Democratic Club
World Institute on Disabilities

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